

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff,

v.

AMMON BUNDY (1),

JON RITZHEIMER (2),

JOSEPH O'SHAUGHNESSY (3),

RYAN PAYNE (4),

RYAN BUNDY (5),

BRIAN CAVALIER (6),

SHAWNA COX (7),

PETER SANTILLI (8),

JASON PATRICK (9),

DUANE LEO EHMER (10),

DYLAN ANDERSON (11),

SEAN ANDERSON (12),

DAVID LEE FRY (13),

JEFF WAYNE BANTA (14),

SANDRA LYNN ANDERSON (15),

KENNETH MEDENBACH (16),

BLAINE COOPER (17),

WESLEY KJAR (18),

NEIL WAMPLER (20),

DARRYL WILLIAM THORN (22),

TRAVIS COX (24),

JAKE RYAN (26),

Defendants.

Case No. 3:16-CR-0051-BR

June 15, 2016

Portland, Oregon

TRANSCRIPT OF PROCEEDINGS
(Status Conference and Oral Argument)

BEFORE THE HONORABLE ANNA J. BROWN, DISTRICT JUDGE

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9 ALSO PRESENT: JON HUNT
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1 (Wednesday, June 15, 2016; 9:30 a.m.)

2
3 P R O C E E D I N G S
4

5 THE COURT: Good morning, everyone. Please be
6 seated, everyone.

7 Mr. Knight.

8 MR. KNIGHT: Morning, your Honor. We're present
9 today in the matter of the United States versus Ammon Bundy, et
10 al. This is Case No. 16-CR-00051.

11 Ethan Knight, Geoff Barrow, and Craig Gabriel
12 appearing on behalf of the United States.

13 Defendants with counsel and with waivers noted are as
14 follows, your Honor.

15 Defendant Ammon Bundy is present with counsel Morgan
16 Philpot and Marcus Mumford.

17 THE COURT: Gentlemen, welcome.

18 MR. MUMFORD: Thank you.

19 THE COURT: Good morning.

20 MR. KNIGHT: Defendant Jon Ritzheimer is present in
21 the courtroom with counsel Terri Wood.

22 THE COURT: Good morning.

23 MR. KNIGHT: Defendant Joseph O'Shaughnessy is
24 present in the courtroom with counsel Amy Baggio.

25 Defendant Ryan Payne is present in the courtroom with

1 counsel Rich Federico.

2 Defendant Ryan Bundy, appearing on his own behalf, is
3 present in the courtroom with standby counsel Lisa Ludwig.

4 THE COURT: Good morning.

5 DEFENDANT RYAN BUNDY: Good morning.

6 MR. KNIGHT: Defendant Ryan Cavalier is present in
7 the courtroom with counsel Todd Bofferding.

8 Defendant Shawna Cox is present by telephone.
9 Appearing on her behalf today, Tiffany Harris.

10 THE COURT: Has she actually connected at this point?

11 MS. HARRIS: I don't think --

12 DEFENDANT SEAN ANDERSON: Good morning.

13 THE COURT: Oh, she's there. All right, Ms. Cox.
14 Good morning.

15 And, Ms. Harris, good morning.

16 MS. HARRIS: Good morning.

17 MR. KNIGHT: Defendant Peter Santilli is present in
18 the courtroom. Appearing on his behalf today, counsel Amy
19 Baggio.

20 THE COURT: Good morning.

21 DEFENDANT SANTILLI: Good morning.

22 MR. KNIGHT: Defendant Jason Patrick is present in
23 the courtroom, appearing on his own behalf, with standby
24 counsel Andrew Kohlmetz.

25 MR. KOHLMETZ: Good morning, your Honor.

1 THE COURT: Good morning.

2 MR. KNIGHT: Defendant Duane Ehmer, present in the
3 courtroom with counsel Michele Kohler.

4 THE COURT: Good morning.

5 MS. KOHLER: Good morning, your Honor.

6 THE COURT: Welcome, Ms. Kohler.

7 MR. KNIGHT: Defendant Dylan Anderson has waived his
8 personal appearance. Appearing on his behalf today is counsel
9 Samuel Kauffman.

10 MR. KAUFFMAN: Good morning, your Honor.

11 MR. KNIGHT: Defendant Sean Anderson has waived his
12 personal appearance. Counsel Matthew McHenry, I believe, is
13 present. Yes.

14 THE COURT: He is indeed. Good morning.

15 MR. McHENRY: Good morning.

16 MR. KNIGHT: Defendant David Fry is present in the
17 courtroom with counsel Per Olson.

18 MR. OLSON: Good morning, your Honor.

19 THE COURT: Good morning.

20 MR. KNIGHT: Defendant Jeff Banta has waived his
21 personal appearance. Appearing on his behalf today, your
22 Honor, is counsel Robert Salisbury.

23 MR. SALISBURY: Good morning, your Honor.

24 MR. KNIGHT: Defendant Sandra Anderson has waived her
25 personal appearance. Appearing on her behalf today, counsel

1 Tyl Bakker.

2 MR. BAKKER: Your Honor.

3 THE COURT: Good morning.

4 MR. KNIGHT: Defendant Kenneth Medenbach appearing on
5 his own behalf, is present in the courtroom today.

6 DEFENDANT MEDENBACH: Good morning, your Honor.

7 MR. KNIGHT: Standby counsel Matthew Schindler is not
8 present. And appearing with Mr. Medenbach today, in a standby
9 capacity, is Mr. Salisbury.

10 DEFENDANT MEDENBACH: Sometime during the hearing
11 today I would like to make some comments.

12 THE COURT: Can you tell me what it's about, so I
13 know where to put it.

14 DEFENDANT MEDENBACH: In regards to a motion to
15 dismiss.

16 THE COURT: One already filed or yet another one?

17 DEFENDANT MEDENBACH: Another one.

18 THE COURT: All right. We'll put it on the list,
19 Mr. Medenbach.

20 DEFENDANT MEDENBACH: Thank you.

21 THE COURT: Go ahead and take a seat.

22 MR. KNIGHT: Defendant Blaine Cooper is present in
23 the courtroom with counsel Krista Shipsey.

24 THE COURT: Good morning.

25 MR. KNIGHT: Defendant Wesley Kjar has waived his

1 personal appearance. Appearing on his behalf today, counsel
2 James Halley.

3 MR. HALLEY: Good morning, your Honor.

4 THE COURT: Good morning.

5 MR. KNIGHT: Defendant Neil Wampler has waived his
6 personal appearance. Appearing on his behalf today is counsel
7 tiffany Harris.

8 MS. HARRIS: (Nods head.)

9 MR. KNIGHT: Defendant Jason Blomgren has waived his
10 personal appearance. And counsel of record, Mr. Rainwater, has
11 also indicated to the Court he's waived his appearance as well.

12 THE COURT: They've been excused from today.

13 MR. KNIGHT: Defendant Darryl Thorn is present in the
14 courtroom. Counsel Laurie Shertz is not present. Appearing,
15 perhaps, on Mr. Thorn's behalf today, Mr. Hood.

16 THE COURT: Mr. Thorn is scheduled for a proceeding
17 this afternoon and was actually excused. He's welcome to stay,
18 but he doesn't have to be here, and his counsel is also
19 excused. Thank you.

20 MR. KNIGHT: Defendant Travis Cox has waived his
21 personal appearance. Appearing on his behalf today is counsel
22 Paul Hood.

23 MR. HOOD: Good morning, your Honor.

24 THE COURT: Good morning.

25 MR. KNIGHT: And defendant Jake Ryan has waived his

1 personal appearance today. Appearing on his behalf, counsel
2 Jesse Merrithew.

3 MR. MERRITHEW: Good morning.

4 THE COURT: All right. Ms. Shipsey?

5 (Defendant Cooper exiting courtroom.)

6 MS. SHIPSEY: Your Honor, he's going to need to waive
7 his appearance for medical reasons right now.

8 THE COURT: Does he want to waive?

9 MS. SHIPSEY: He does, your Honor.

10 THE COURT: All right. Then he may.

11 All right. Mr. Thorn, you're free to go at any point
12 that you want to go. All right?

13 DEFENDANT THORN: Thank you, your Honor.

14 THE COURT: So let's proceed with the agenda.

15 Just a reminder for counsel who represent parties who
16 wish to waive personal appearances for these hearings, those
17 appearance waivers need to be signed personally by the client,
18 just to ensure there is a deliberate decision for each of those
19 waiver decisions.

20 I wanted to update you briefly on the jury summons
21 process.

22 The summonses and "dear prospective juror" letters
23 you helped me work on all went out. I did not add to the
24 letter the proposed additional language that expanded on a
25 juror's duty to serve. I simply left the letter in the form

1 that you saw it last.

2 We've had numerous responses. Many requests for
3 hardship deferrals or excuses the Court and the jury supervisor
4 are going through now. But I can tell you we have several
5 hundred jurors who have responded and not sought a hardship
6 excuse based on time or based on other issues. So we do have a
7 good response underway.

8 Once we identify the pool of jurors who have not been
9 excused or deferred because of these hardships, then as we
10 previously discussed, those jurors will be sent a jury
11 questionnaire.

12 One of the things you're supposed to be submitting
13 today are the jointly proposed questionnaire documents, and I
14 want to be sure you're on track to do that.

15 Who can speak to me about that?

16 Mr. Knight?

17 MR. KNIGHT: We are, your Honor. The parties have
18 conferred, and we expect those will be filed, I believe, at the
19 end of the day.

20 MR. FEDERICO: Yes, your Honor. Ms. Baggio and
21 Mr. Knight and I met yesterday. And I agree with the statement
22 that they'll be filed today.

23 THE COURT: All right. So my intention is to take
24 your input, add to it potentially, delete from it potentially,
25 send it back to you for one more opportunity for input before I

1 finalize the questionnaire.

2 Once finalized, then it will go to that pool of
3 jurors who have not been excused for hardship. I should say,
4 many of the jurors were also exempt. Some no longer lived in
5 Oregon. Some are beyond the statutory age, and so forth. So
6 we're reducing the pool based on those matters.

7 And, again, if -- I'm optimistic that there will be a
8 wide pool available to complete the questionnaires, which, of
9 course, will generate more bases, I'm sure, for potential
10 excuse.

11 Ms. Baggio.

12 MS. BAGGIO: Thank you, your Honor.

13 Regarding process -- and I believe that this is a
14 joint request -- the Court had directed the parties to file the
15 proposed questionnaire in the public record, and I believe we
16 would ask if the Court would allow us to provide that to the
17 Court by letter, so that it's not in circulation.

18 THE COURT: Because it's a draft, as long as it's
19 submitted in a joint form, as you're -- you have been doing,
20 that works for me. Eventually there will be some form of
21 record. I don't know the extent to which it will be public,
22 but I -- pardon me. (Coughing.) I will need to be making some
23 orders in the very near future around issues of juror
24 anonymity, and the like, to the extent that needs to happen.
25 So for the moment, yes, you may submit your proposed

1 questionnaires to the Court by e-mail.

2 MS. BAGGIO: Thank you.

3 THE COURT: Counsel.

4 MR. KOHLMETZ: Your Honor, Andrew Kohlmetz. At
5 Mr. Patrick's request, last week I filed an ECF -- a joint
6 funding request in his name for a jury consultant to assist in
7 the drafting of his juror -- the juror questionnaire,
8 specifically with regard to addressing the issues of pretrial
9 publicity. We have not heard back yet --

10 THE COURT: It has not come to me yet.

11 MR. KOHLMETZ: Okay. Mr. Patrick would ask leave
12 simply to supplement the proposed juror questionnaire.

13 THE COURT: Well, you know what the process is. When
14 it goes, it goes. If you have an opportunity to input into it,
15 you will; and if you don't, you don't. There's only so much I
16 can do.

17 The questionnaire has to go out by early July in
18 order for all of the parties going to trial to have meaningful
19 time for the responses.

20 MR. KOHLMETZ: Certainly.

21 THE COURT: A consultant may or may not be helpful
22 for preparing a questionnaire. A consultant may or may not be
23 needed for voir dire or in the evaluation of the responses.
24 But I will -- as soon as the request reaches me, I'll act on
25 it.

1 You know the process. It has to go through a number
2 of steps before it comes to me, and as of last night, it hadn't
3 been there.

4 MR. KOHLMETZ: Thank you, your Honor.

5 THE COURT: All right. Very good.

6 All right. There was also today a -- the deadline
7 for filing round 2 motions and the jointly proposed jury
8 instructions.

9 With respect to the latter, who can speak to me on
10 your status there?

11 Ms. Baggio.

12 MS. BAGGIO: Thank you, your Honor.

13 The parties have been working to confer on that. The
14 Government has provide their instructions. We've provided the
15 Government our instructions. It is in a joint submission.

16 We're just finalizing that today, and we do expect
17 that to be filed within the Court's deadline.

18 THE COURT: Very good.

19 And with respect to round 2 motions, that term has
20 been used in a variety contexts, and I see now that the parties
21 intended that round 2 motion headline to include a variety of
22 discovery issues, which I'll address specifically. But in
23 addition to the two motions that were filed yesterday, I need
24 someone to tell me what motions are coming today, June 15, the
25 deadline; beyond the two that have been filed.

1 Mr. Olson.

2 MR. OLSON: Well, your Honor. Not in actual response
3 to your question, but originally, I was intending to file a
4 motion to suppress Facebook search warrant material. Because
5 this is an issue that's cropped up fairly recently for me, I'm
6 asking for an extension of time to Monday to file that.

7 Mr. Knight has no objection to that. It won't affect the
8 current schedule as set.

9 THE COURT: And is this a motion you're anticipating
10 client-specific to Mr. Fry? Or with respect to others? Or
11 what?

12 MR. OLSON: It's general. It's going to be filed on
13 behalf of any and all defendants whose Facebook accounts were
14 seized pursuant to search warrant.

15 There may be some particularized arguments that
16 relate to particular defendants, but it's primarily an issue of
17 overbreadth.

18 THE COURT: All right. Who else -- before I respond
19 to that, I need to know what else is coming.

20 Mr. Federico?

21 MR. FEDERICO: Your Honor, on behalf of Mr. Payne, I
22 anticipate filing -- or will be filing two motions to suppress
23 today.

24 The first is a motion to suppress Facebook evidence
25 under a different theory than what Mr. Olson will be filing.

1 This one will challenge the underlying legality on
2 jurisdictional limits of the warrants, issued both in Nevada
3 and Oregon.

4 Your Honor, I believe it will have applicability
5 beyond Mr. Payne, so I would anticipate it would apply to most
6 all defendants who would seek to suppress the evidence.

7 One issue regarding the filing itself is -- my
8 intention is to file the motion on ECF, and a public filing.
9 I've discussed it with Mr. Knight.

10 However, the warrants themselves remain under seal in
11 the protective order and so -- and particularly the Nevada
12 warrant has only been provided in discovery to those defendants
13 also charged in Nevada.

14 So I the procedure I intend to follow, absent the
15 Court direction to the contrary, is to file both the exhibits
16 or the warrants under seal by hand delivery to the Court and
17 the Government. Again, the defendants have been provided the
18 Oregon ones in discovery. And those who are charged in Nevada
19 already have them in the Nevada discovery as well.

20 THE COURT: All right. So a public filing of the
21 motion and the memorandum, but the underlying sealed materials
22 not on the public record?

23 MR. FEDERICO: Correct, your Honor.

24 THE COURT: That's fine.

25 MR. FEDERICO: A second motion to be filed today,

1 your Honor, is, again, a motion to suppress. This one is
2 regarding e-mail information of Mr. Payne that was seized
3 pursuant to a warrant.

4 I frankly don't know whether or not that will have
5 applicability to other defendants as well. And regarding the
6 sealing of that exhibit as well, we may need to follow the same
7 procedure. We're still looking into whether or not some of
8 those materials are under seal as well.

9 THE COURT: Can you give me the basic theory behind
10 this second motion to suppress?

11 MR. FEDERICO: Yes, your Honor.

12 It's basically a particularity requirement on the
13 warrant itself regarding the -- sort of the scope of the e-mail
14 information that was seized.

15 THE COURT: And say again, is this specific to
16 Mr. Payne or to others as well?

17 MR. FEDERICO: Your Honor, I'm not sure how many it
18 would apply to. The warrant itself was particular to him.
19 Whether or not there are other e-mail accounts that have the
20 same theory to suppress, I'm just not in a position to say.

21 THE COURT: All right. Ms. Baggio.

22 MS. BAGGIO: Thank you, your Honor. Excuse me.

23 With regard to the defendants charged in the Nevada
24 case, Mr. Olson is writing an overbreadth challenge to the
25 Oregon Facebook warrant. And he's doing that on behalf of all

1 Oregon defendants whose accounts were seized.

2 There are the separate Facebook warrants for the
3 Nevada defendants, but the same issues regarding overbreadth
4 apply to the Nevada warrants. Therefore, what I am doing is
5 I'm filing a separate motion suppress but incorporating all of
6 the arguments raised by Mr. Olson as to the Oregon warrants as
7 to the Nevada warrants.

8 THE COURT: And this will be on behalf of those
9 defendants only who are common to both cases?

10 MS. BAGGIO: And whose e-mail -- excuse me, Facebook
11 accounts were seized, that is correct. And, therefore, I would
12 also ask for permission to file that on Monday, since I'm
13 relying on Mr. Olson's pleading.

14 THE COURT: All right. I am collecting requests
15 right now, not making rulings. Just trying to --

16 Hold on, sir. Just a moment.

17 (Mr. Mumford being seated.)

18 THE COURT: Go ahead, Ms. Baggio.

19 MS. BAGGIO: And the other question -- again, sort of
20 a practical one -- to avoid filing numerous exhibits that
21 are -- I think the one Facebook application is about 98 pages
22 long. That would be relevant to the motion I'm filing as to
23 Nevada, as would the one that Mr. Federico is filing. Would
24 the Court allow us to refer to the exhibits filed as to another
25 motion to suppress, if it's the exact same document?

1 THE COURT: Yes.

2 MS. BAGGIO: Or would the Court like -- okay. Thank
3 you.

4 THE COURT: Yes. So long as the record is clear
5 where the reference is on which the argument is based, so that
6 we know where to find it.

7 Mr. Mumford, just a minute. There was one ahead of
8 you.

9 MR. KOHLMETZ: Yeah, just briefly. Mr. Patrick's
10 long-threatened motion for change of venue, that was -- it will
11 be filed this afternoon as well.

12 THE COURT: All right. Mr. Mumford.

13 MR. MUMFORD: Yes, your Honor. Your Honor, thank
14 you. As we talk about these round 2 motions -- and,
15 understand, we're -- we're just coming into the case, getting
16 up to speed. One of the issues that I see that we really face
17 here is we don't even know if the discovery is complete yet.

18 I understood that the Government was supposed to have
19 had certified the completeness of its discovery by May 15th. I
20 understand that has not been done.

21 THE COURT: The Government certified substantial
22 completion by may -- by mid-May. They did do that.

23 MR. MUMFORD: What does that mean, exactly?

24 THE COURT: Counsel, you're going to need to talk
25 with opposing counsel about what they mean by that, and so

1 forth. I can't take the time now to bring you up to speed on
2 that.

3 What's your point, though, with respect to round 2
4 motions?

5 MR. MUMFORD: Well, your Honor, we have not received
6 discovery. We have not -- we do not know what -- what is there
7 or is not there.

8 THE COURT: Have you spoken with the prosecutors yet?

9 MR. MUMFORD: I don't think we've spoken with the
10 prosecutors. I've been speaking with our -- our -- our
11 discovery team here.

12 THE COURT: All right. So, Mr. Mumford, you need to
13 meet with the prosecution team. You need to bring yourself up
14 to speed in terms of what has been disclosed and not. All of
15 the defendants have been under my order, working together
16 cooperatively, receiving discovery and the like, and you need
17 to make that conferral. And if you have an issue after that
18 conferral, I'm happy to address it.

19 MR. MUMFORD: Well, I think, your Honor, I can
20 anticipate that we -- we will.

21 THE COURT: Mr. Mumford, you need to follow the
22 Court's direction. There is an overarching order --

23 MR. MUMFORD: I understand.

24 THE COURT: -- please listen.

25 There's an overarching order in effect, and I won't

1 be taking up time in court hearings until there's been
2 affirmative conferral on whatever issue.

3 Since you haven't even spoken with the prosecutors
4 yet, you need to do that first. You need to speak with
5 Ms. Baggio and Mr. Federico, who've been taking a lot of the
6 lead on the discovery issues. And once --

7 MR. MUMFORD: I --

8 THE COURT: May I please finish, sir. Sir?

9 MR. MUMFORD: Well, you're assuming that I haven't.

10 THE COURT: Sir?

11 MR. MUMFORD: You're assuming I haven't.

12 THE COURT: I asked you and you said you had not.

13 MR. MUMFORD: I've been conferring with Ms. Baggio.

14 THE COURT: I asked if you conferred with the
15 prosecutors.

16 MR. MUMFORD: Well, I've been conferring -- how about
17 this? I've been conferring with the prosecutors through
18 Ms. Baggio and the other defense counsel.

19 THE COURT: Mr. Mumford -- Mr. Mumford, enough now.
20 I'm making a ruling.

21 I'll take up your concern about whatever it is you
22 want to get to once you meet with the prosecution team, and you
23 all file a joint report to me as to whatever the issues are.

24 MR. MUMFORD: I think the issue I'm speaking of is
25 contemplated in the joint status report that we did confer

1 with --

2 THE COURT: Then define the issue, please, because
3 you haven't. You told me you didn't know about discovery. You
4 didn't know about --

5 MR. MUMFORD: Okay.

6 THE COURT: And that already has been accomplished.

7 MR. MUMFORD: I'll get right to it, then.

8 THE COURT: Yes, please.

9 MR. MUMFORD: It is -- we anticipate seeking leave of
10 the Court to extend the entirety of the -- of the -- motion
11 deadlines that have been brought and raised to this -- this --
12 this -- at this point here, your Honor. Because how --
13 having -- having not received -- not received discovery, not
14 being able to review it, we don't feel like we can be subject
15 to a round 2 motion -- motion deadline at this time.

16 THE COURT: All right. Let me hear, first, from
17 someone on the prosecution team, and then I'll get back to this
18 point.

19 Who wants to address this?

20 Mr. Barrow.

21 MR. BARROW: Yes, your Honor.

22 As to discovery, what is the Court's question?

23 THE COURT: I want you to respond to Mr. Mumford's
24 point that he and his clients have not received discovery. I
25 want you to respond to Mr. Mumford's point that there hasn't

1 been certification by the Government. And I want you to
2 respond to and clarify whether there's been any contact by
3 Mr. Ammon Bundy's new counsel with the prosecution team.

4 MR. BARROW: Certainly, your Honor.

5 The prosecution team has reached out to counsel for
6 Mr. Bundy -- new counsel for Mr. Bundy and has not received any
7 response. There's been no phone calls and no in-person
8 meetings. We are available to meet with them today, or
9 whenever they would like.

10 Discovery, of course, has been provided to
11 Mr. Bundy's prior counsel and has been provided as we've
12 outlined in the various reports to the Court. And on May 16th,
13 the Government certified in the status reports substantial
14 compliance with the discovery.

15 THE COURT: Thank you.

16 So, Mr. Mumford, to that, do you have anything you
17 wanted to add?

18 MR. MUMFORD: I don't -- I don't -- I don't know that
19 they --

20 THE COURT: I can't hear you, sir.

21 MR. MUMFORD: Excuse me.

22 I don't know that they responded to my -- to the
23 anticipated -- the anticipated relief that we'll seek. But
24 I'll -- I'll confer with everyone. I agree with the Court.

25 THE COURT: So, Mr. Mumford, here's the bottom line.

1 You certainly may file a motion to extend the deadline. To do
2 so, you first must confer with the prosecutors about the issues
3 that underlie your request.

4 And once you have, then you will file with the
5 prosecutor a joint statement on the position of whether the
6 deadline should be extended or not. That's -- that's what
7 needs to happen.

8 So confer with the prosecutors. If you believe you
9 need to file a motion for leave to late-file these motions to
10 suppress or other round 2 motions, then explain that in a joint
11 statement and I'll take it up at that point.

12 Do you know, yet, whether there are any other
13 motions -- beyond what you've learned the co-defendants are
14 filing -- that you already know you'll be filing on behalf of
15 your client?

16 MR. MUMFORD: Yes, your Honor. We -- we do
17 anticipate bringing a motion to consolidate a release hearing
18 in both Oregon and Nevada matters.

19 I think it's fair to say that we're observing, in
20 that respect, the -- the -- the proceedings and the arguments
21 that Mr. Federico is currently pursuing in front of the Ninth
22 Circuit on that issue.

23 As your Honor knows, we do anticipate further
24 bringing a motion to release Mr. -- to obtain the release of
25 Mr. -- Mr. Bundy.

1 THE COURT: I am not aware of that. This is the
2 first I've heard of that.

3 MR. MUMFORD: Well, it's been -- but it was -- it
4 was -- we were given the leave to -- to bring that at any time,
5 from earlier orders, as I understand it.

6 THE COURT: Everyone has been addressing their
7 individual release issues.

8 In this instance, any motions for release should be
9 addressed to Senior District Judge Robert E. Jones. He's been
10 kind enough to take those hearings, so --

11 MR. MUMFORD: And it was only because -- your Honor
12 just asked me, what -- what -- what motions are that I'm -- I'm
13 bringing them up.

14 THE COURT: And I thank you for letting me know
15 that's happening. But just so you know, I want to be clear. A
16 motion to release, again, is also subject to the conferral
17 point, and then it should be -- when filed, it will be docketed
18 by Judge Jones's chambers.

19 Beyond that, do you have specific motions you're
20 anticipating?

21 MR. MUMFORD: Well, there are -- there will be, I --
22 I assure you that.

23 THE COURT: Please tell me what they are. Since
24 today's the deadline, I need to know what to anticipate and
25 plan for.

1 MR. MUMFORD: Well, I think we have a motion to
2 suppress the -- I understand there was a -- a warrant issued
3 very early on and leave -- I believe we anticipate bringing a
4 Franks motion on that issue. The false and material misleading
5 statements from the Government in obtaining that -- that
6 warrant to surveil, to conduct the -- I believe it's the -- the
7 Guardian system, is what it was. A surveillance -- I think
8 it's the NSA -- as I understand it, something like that,
9 surveillance of Mr. Bundy. And we believe there's -- we
10 believe there are grounds to bring a Franks motion on that.

11 Like I say, I'm conducting discovery, so I would
12 like -- that's one of the reasons why I anticipate them moving
13 to put the -- the -- the -- to put the motion schedule -- give
14 an extension on the motion schedule, so I can bring, as your
15 Honor knows, a well-founded and -- and detailed motion before
16 the Court so that -- so that the Court can make a -- an
17 advised --

18 THE COURT: Well, just so you know from history,
19 Mr. Mumford, the motions deadline was set with the input of
20 Mr. Bundy's then counsel and all -- all lawyers participating.

21 I need to finish before you try to answer.

22 MR. MUMFORD: Oh, okay.

23 THE COURT: The September 7 trial date exists because
24 there are, like your client, people in custody who have not
25 waived speedy trial rights. And I'm determined to move forward

1 to that date.

2 I will entertain any reasonable motion to continue
3 based on whatever real facts are. But I assume, when you and
4 your colleague took on Mr. Bundy's representation, you did so
5 knowing of your client's insistence on his right to speedy
6 trial and the existing date. So you have to understand the
7 case is being managed with all those interests in mind.

8 MR. MUMFORD: (Nods head.) Certainly do. Thank you.

9 May I ask the Court a -- a question on that? A
10 little bit of -- a little bit of clarification on that?

11 THE COURT: Sure.

12 MR. MUMFORD: It's my understanding that the Court
13 has declared this matter complex under the -- under the -- as
14 requested by the Government. And therefore the speedy act --
15 Speedy Trial Act deadlines do not apply.

16 Now, your Honor is saying my client hasn't waived his
17 speedy trial. I'm just trying to understand. Is there a
18 distinction you're making between --

19 THE COURT: The Speedy Trial Act still applies. The
20 complex designation simply relieved the Court from trying the
21 matter within 70 days of the Indictment. I'm still required to
22 bring the matter to trial respecting the speedy trial rights of
23 your client and others.

24 You may know, if you reviewed the record, that some
25 defendants have waived their speedy trial rights, and they've

1 been relieved from preparing for the September 7th trial.

2 So as far as I'm concerned, that is still the trial
3 date, and we're going to do everything we can to ensure that
4 we're ready to start picking a jury on that day in order to
5 move forward as to those defendants who have not waived their
6 speedy trial rights.

7 Any continuance under the Speedy Trial Act has to
8 find that the ends of justice warrant overriding the rights of
9 the parties to a speedy trial.

10 And so far, in the insistent face of a unified
11 presentation by all defendants in custody that they must have
12 their speedy trial rights observed, it's an issue that hasn't
13 arisen. So I hope that gives you a basic answer.

14 We need to now move on to the other items on the --

15 MR. MUMFORD: It does. I would -- I would -- based
16 on that, I would tell the Court -- advise the Court that I
17 anticipate raising a motion to address those issues. And if
18 you want me to, I can -- I can preview it and address that now.
19 Or, if you want me to, I can just wait. I'll confer --

20 THE COURT: If your client wants to waive his speedy
21 trial rights, I need to know right away. And if that happens,
22 then the September 7 trial date may be adjusted for him.

23 If your client wants to move to continue the
24 speedy -- the September 7 trial date, he may file such a
25 motion, and we can take it up on the particulars.

1 But right now your issues are not on the agenda, and
2 I need to respect the fact that everyone else's are. You were
3 invited to supplement the status report with a filing and you
4 didn't, so we have to move through these matters.

5 So if that's a motion you want to file, you've now
6 made me aware you want to file it, and I'll address scheduling
7 of those issues once I get feedback from everyone else.

8 MR. MUMFORD: The -- and the -- just to clarify, the
9 motion that I anticipate filing is -- is that it is un -- is a
10 motion to dismiss based on it's unfair to -- to force a
11 defendant to choose between the speedy trial and a fair one.

12 THE COURT: So what is it your client wants? Does he
13 want to go to trial on September 7th or does he not?

14 MR. MUMFORD: Well, your Honor's -- your Honor's
15 rulings have excused the Government from any consequences of
16 the delays on their part, while -- while holding Mr. Bundy's
17 feet to the fire, so to speak.

18 THE COURT: No, Mr. Mumford. I'm afraid you're
19 misunderstanding. I've simply said that any defendant who
20 affirmatively waives speedy trial rights need not continue to
21 prepare for trial on September 7. That's all I've ever said.

22 Your client insists on September -- a speedy trial.
23 That's the trial date. No one has moved to continue that trial
24 date who has not waived speedy trial. So if you want to make a
25 motion to continue that trial date, you may.

1 MR. MUMFORD: I understand that. And I think we've
2 got on the agenda today that that will be -- that the
3 deadline -- I think there's a proposed deadline for that at the
4 end --

5 THE COURT: For motions to continue and motions to
6 sever, yes. And I would like to get to that agenda.

7 MR. MUMFORD: And I guess that's -- that's where I
8 am, is -- is would -- is it contemplated that that would be a
9 motion to extend the entirety of the pretrial schedule as well?
10 Or just --

11 THE COURT: Any -- Mr. Mumford, hear me clearly. I
12 am focused on September 7 for jury selection for those parties
13 who have not waived their speedy trial rights. And I am doing
14 everything humanly possible to ensure that a fair trial
15 commences on September 7.

16 I suspect it's going to take days to pick a jury. I
17 suspect thereafter it will take days to give opening
18 statements. I suspect thereafter it will take days and weeks
19 for the Government to put on its case. And I suspect a
20 defendant who chooses to offer evidence won't be in a position
21 to have to do so for months from today and about a month after
22 September 7. So those are all moving targets, in my mind, with
23 respect to the obligations.

24 Now, please take a seat. I need to get on with the
25 agenda.

1 MR. MUMFORD: Your Honor brings to mind the words of
2 a pop song from the '80s, "Time -- time make lovers feel like
3 they got nothing but time." And so I appreciate that.

4 THE COURT: And we don't have nothing but time, sir.
5 We have rights to respect, as you've noted. And I'm going to
6 try my best to ensure that we get to that day.

7 Now, who else has motions under round 2 headings that
8 haven't been identified? Anybody else?

9 All right.

10 MR. FEDERICO: Your Honor, I'm sorry. One more
11 regarding a motion to suppress.

12 In -- the discovery joint status report identified
13 that there were digital devices seized that were produced to
14 the defendants on the 8th of June. There's been some
15 accessibility issues of those. They will be produced, as I
16 understand it; the raw images and forensic reports. We don't
17 have those yet. As we anticipated filing a motion to suppress
18 on those, it's difficult to know whether or not that's
19 something we would move to do until we have the underlying
20 data. So I identify that to the Court as one that, I think
21 under the category of motion to suppress, would have fallen
22 under round 2. But because we don't have the discovery on
23 that, I would ask for leave to file that. You know, we can do
24 that, I think, fairly expeditiously after we receive the
25 discovery. But that's on our --

1 THE COURT: Let's address that specific point after
2 we go through the joint statement on the outstanding discovery
3 issues, and then I'll pull back to these deadlines thereafter.

4 I want -- as I alerted you in an e-mail, Counsel --
5 to appoint a committee to help me and court staff deal with the
6 physics of a courtroom layout for trial.

7 And so I let you know I needed one lawyer from each
8 side and one technical person from each side to be part of that
9 committee, to work with me and our IT personnel.

10 I will simply note on the issue of what that
11 courtroom is going to look like, we're still -- we're still
12 working on the layout issues, and I completely appreciate from
13 the joint status report the positions set out on behalf of
14 Mr. Ammon Bundy with respect to public observation.

15 I don't know how much public observation space will
16 be available, depending on how many bodies we have to
17 accommodate at trial, but there will be some. And I can assure
18 you, we don't need to spend a lot of time on that front.

19 Those folks who are sitting in the back row in the
20 courtroom today know that the benches you're sitting on are
21 attached to the wall. They're not going to be removed. We're
22 going to do our very best to accommodate all of those who are
23 going to trial within the spaces available.

24 But if we need to remove one row because we have to
25 put a party there and there are lawyers, we'll do that. But

1 that's a work in progress. And this committee I'm about to
2 appoint is going to be working on that issue.

3 So you can rest assured there will be some in-court
4 public presence, and it's going to be driven in part by the
5 numbers of people we need to accommodate.

6 So is there one person who's identified for the
7 Government on this committee?

8 Mr. Knight?

9 MR. KNIGHT: Yes, I'll be handling that, your Honor.

10 THE COURT: And who will be with you?

11 MR. KNIGHT: Ms. Raina Rallis from our litigation
12 support section.

13 THE COURT: And on behalf of the defendants, who is
14 the one person?

15 MR. FEDERICO: Your Honor, I volunteer myself in
16 supporting the -- Joseph Lohner, who is the chief paralegal
17 from the defender office. He is highly technical.

18 THE COURT: All right. So I will be in touch with
19 the four of you to set up a meeting with our IT folks. One of
20 the issues we're trying to address is simply the electronic
21 access from various tables to the electronic evidence display
22 systems. The lines of sight from wherever counsel and parties
23 end up sitting, to the witness stand. And then for the
24 inevitable overflow room, the ability to see in an overflow
25 room those who can't fit in the courtroom, what's going on in

1 the courtroom.

2 So we're going to need to know things like who's
3 going to be making the electronic evidence display
4 presentations. And I think ideally it would be good for all
5 defense counsel to confer, who are going to trial, so that
6 there is one technical person the Court will look to. And that
7 may be your colleague, Mr. Federico, to do the evidence display
8 presentations. And then to figure out a way to protect the
9 work product other things along the way. But we'll be setting
10 up a meeting to address that.

11 MR. MUMFORD: Your Honor?

12 THE COURT: Yes, Mr. Mumford.

13 MR. MUMFORD: May I just address one issue to correct
14 the record here.

15 I believe the Government said that they had provided
16 discovery to us, as new counsel. And we -- I just conferred
17 with Mr. Philpot, and neither of us have received any discovery
18 from --

19 THE COURT: Have you not received materials from
20 Mr. Arnold's --

21 MR. MUMFORD: We're receiving from his office, but I
22 understood them, in response to your Honor's question of the
23 Government, to say that they had been sending stuff to us.

24 And if that was -- if that was indeed what they said,
25 that is not accurate.

1 THE COURT: Mr. Barrow?

2 MR. BARROW: Your Honor, that is not what I said; I
3 said we sent the discovery to prior counsel. We will work with
4 Mr. Philpot to send future discovery directly to him. And I
5 believe other issues have been sent to him as well.

6 THE COURT: All right.

7 MR. MUMFORD: And so I'm assuming that means there's
8 been no discovery that's been produced since -- since we --
9 we --

10 THE COURT: Counsel, you need to talk to --

11 MR. MUMFORD: Yeah, I'll --

12 THE COURT: -- the prosecutor and not through me.
13 Don't -- please don't take our time talking to him through me.
14 We don't have time for that.

15 Take a seat.

16 MR. MUMFORD: I'll deal with that. Thank you.

17 THE COURT: Thank you very much.

18 All right. I would like to address status on some
19 existing motions because I want to get these cleared as we go
20 to the disputed issues on the joint discovery statement. It's
21 not clear to me, with respect to the Motion No. 545 to compel
22 notice of surveillance, what the parties' expectations are.

23 It looked to me, at first, as though the Government
24 had asserted and certified that this was not an issue because
25 there wasn't any. And then I'm hearing discussion from

1 Mr. Mumford, and in other filings, about this still being an
2 issue.

3 So, Ms. Baggio, I think you filed the motion. Can
4 you tell me what its status is from your perspective, please.

5 MS. BAGGIO: Yes, your Honor.

6 Your Honor, as I understood the Court's e-mail from
7 June the 13th at 1:46 p.m., the Court asked if the defendants'
8 motion was moot in light of the Government's representation
9 that there was not any indication that there was involvement of
10 the NSA or any other intelligence agency to have collected
11 information relevant to this case. And second, in any event,
12 there is not any such information in the possession of the
13 prosecution team or any agency acting on behalf of the
14 prosecution team.

15 I have been in touch with Mr. Knight about this. And
16 it is correct that there are references in discovery to
17 different databases that were used by the Government in its
18 investigation of this case. And I provided an example to the
19 Government of one such database. And I believe that
20 Mr. Kohlmetz, in the context of some of these disputed
21 discovery issues, is going to address some of the other
22 databases.

23 It's our position, your Honor, that the issue does
24 need to be set for argument. That in light of the specific
25 references in discovery that both, as to question 1, the

1 intelligence agencies were involved; and, as to question 2,
2 that information was made available to the prosecution team and
3 their investigators because it's in my discovery. So that's
4 our position.

5 THE COURT: All right. Who's responding?
6 Mr. Knight?

7 MR. KNIGHT: Thank you, your Honor.

8 Without getting too far into the substance, the
9 Government has a different view of what that discovery means.
10 And I think Ms. Baggio is correct. Perhaps the best course
11 right now is to set the matter for argument, to put that before
12 the Court.

13 THE COURT: With a reply on behalf of defendants to
14 make the points on an evidentiary -- you've actually filed a
15 response?

16 MR. KNIGHT: Yes.

17 MS. BAGGIO: I think it might be helpful to the Court
18 if I did file a response to some of these exhibits --

19 THE COURT: Yes, when can you? When?

20 MS. BAGGIO: Friday of next week, your Honor? Would
21 that be okay?

22 THE COURT: I need a calendar. Give me a minute.

23 (Pause, referring.)

24 MS. BAGGIO: Your Honor, may I add something else,
25 please?

1 THE COURT: On that particular issue?

2 MS. BAGGIO: Yes, ma'am.

3 THE COURT: Yes.

4 MS. BAGGIO: If -- I can make it happen by this
5 Friday, your Honor. I mean, I have this done. So if that
6 would be helpful, I can make it by this Friday.

7 THE COURT: Well, I'm going to be reasonable in
8 trying to put all of this together, so let me just add it to
9 the list of things I need to set before we're finished this
10 morning. So --

11 MS. BAGGIO: Thank you.

12 THE COURT: And then I take it you're asking for oral
13 argument, as opposed to the Court looking at the record only?

14 MS. BAGGIO: That is correct, your Honor. Thank you.

15 (Pause, referring.)

16 MS. SHERTZ: Your Honor?

17 THE COURT: So -- yes, Ms. Shertz.

18 MS. SHERTZ: While there's a brief pause, your Honor,
19 I just wanted to note for the record that Mr. Thorn had
20 initially waived his appearance this morning and then notified
21 me a few minutes after 10:00 that he wished to be here this
22 morning. And he is present, out of custody, at this time.

23 THE COURT: We did note his appearance. I think we
24 did. Yes. And I told him he was free to go whenever he wanted
25 to, and that you had been excused.

1 Right?

2 MS. SHERTZ: I'm just trying to catch up this
3 morning.

4 THE COURT: All right. Very good. All right.

5 Before I get into all of the issues concerning the
6 discovery matters on your joint report, I wanted simply to note
7 and get an update with respect to the Ninth Circuit matter and
8 its relation to the pending motion to dismiss No. 480.

9 Mr. Federico, can you tell me where things stand
10 there?

11 MR. FEDERICO: Yes, your Honor. Oral argument is
12 scheduled for tomorrow morning at 10:00 a.m., in San Francisco,
13 on the issue.

14 The Court -- the Ninth Circuit had granted an
15 expedited consideration. I don't know, frankly, what that
16 means in terms of how long it will take the Court to issue a
17 ruling or opinion, but oral argument is tomorrow morning.

18 THE COURT: Have you supplemented the record at all
19 with the fact of your pending motion to dismiss here or the one
20 that was filed in Nevada?

21 MR. FEDERICO: Yes, your Honor. The Court -- the
22 Ninth Circuit ordered supplemental briefing on the question of
23 mootness in regards to the summaries that related to that
24 supplement briefing. We did update the Court on what had
25 happened since the briefing prior, which was our reply. So

1 that did include the motion to dismiss that was filed both here
2 and in the court in Nevada.

3 THE COURT: All right. Are you going?

4 MR. FEDERICO: Yes, your Honor.

5 THE COURT: And is anyone else arguing here from this
6 group?

7 DEFENDANT RYAN BUNDY: Yes, your Honor. I have the
8 right to be there. I would like to be there myself.

9 THE COURT: That's a matter you'll have to address to
10 the Ninth Circuit. It's a matter I don't have any jurisdiction
11 over. The Ninth Circuit determines participation in their oral
12 arguments, Mr. Bundy.

13 DEFENDANT RYAN BUNDY: Okay. They have -- you know,
14 they have asked that I be there, and so I need to be able -- to
15 be able to do so.

16 THE COURT: This is the first I'm hearing that this
17 Court has any issue with it. It's a matter of the Ninth
18 Circuit having an argument. And I -- it's not my argument,
19 it's not my jurisdiction.

20 DEFENDANT RYAN BUNDY: Okay. So we're just
21 requesting that you order that I be transported there so that I
22 can be present.

23 THE COURT: That's not possible in under 24 hours.
24 Not -- because you're in custody. You may want to seek with
25 the Ninth Circuit an opportunity to participate by video, or

1 something. But there's not any human way possible I can effect
2 your presence in San Francisco in under 24 hours with you in
3 custody.

4 I don't have jurisdiction over the matter, to begin
5 with, but even if I did, I couldn't do it.

6 DEFENDANT RYAN BUNDY: Okay. So I request release
7 from custody so that I may attend.

8 THE COURT: That request is denied.

9 The matter has to be addressed to the Ninth Circuit.
10 It's not a matter for this Court to consider. It's -- I'm
11 thinking of something else.

12 You're simply going to have to let the Ninth Circuit
13 know you want to participate in some fashion. It's not
14 something I can address.

15 The appeals are filed to the Ninth Circuit, the
16 briefs are filed to the Ninth Circuit. You and your standby
17 counsel can communicate with the Ninth Circuit. But I don't
18 have any authority there, sir.

19 DEFENDANT RYAN BUNDY: You -- okay. You -- okay.
20 Thank you.

21 MR. FEDERICO: Your Honor, to answer your question,
22 you had asked whether or not any others were going to be
23 addressing the Court. I believe I will be addressing the Court
24 on behalf of -- there are actually five defendants who joined
25 the appeal, even though there are seven that are in both cases,

1 so I believe --

2 THE COURT: Here?

3 MR. FEDERICO: Yes, your Honor. I believe I'll be
4 arguing on behalf of all five.

5 THE COURT: And will any Government lawyer from the
6 District of Oregon be participating?

7 MR. KNIGHT: Mr. Gorder will be appearing on behalf
8 of the Government, for the District of Oregon.

9 THE COURT: Do you know if the District of Nevada's
10 counsel is participating or not?

11 MR. GABRIEL: No, your Honor. It says it's an appeal
12 from this Oregon case. Only Mr. Gorder will appear.

13 THE COURT: All right. But the Court is aware of the
14 motion to dismiss pending in Nevada, too?

15 MR. FEDERICO: Yes, your Honor. It was included in
16 the briefing.

17 THE COURT: Okay. And then I just remind you, I
18 would like a joint report by June 20, as previously set, on
19 whether any developments there affect what we're doing here.

20 MR. FEDERICO: Yes, your Honor.

21 DEFENDANT RYAN BUNDY: Your Honor?

22 THE COURT: Yes, sir.

23 DEFENDANT RYAN BUNDY: I request immediate hearing
24 with Judge Jones per -- for pretrial detention, so that I --
25 because I am not waiving my right to attend that meeting, so --

1 (Pause, conferring with Ms. Ludwig.)

2 DEFENDANT RYAN BUNDY: Yeah, I can get to San
3 Francisco by myself if the Court will release me.

4 THE COURT: We're in session right now. I'm not a
5 magician. If you wanted to go and you wanted to have release
6 considered, you should have raised it earlier.

7 When we're finished in court today, I'll see if Judge
8 Jones is around. But I don't know that we can address it now.
9 We have to move on, please.

10 (Pause, Ms. Ludwig and the defendant conferring.)

11 DEFENDANT RYAN BUNDY: Thank you, your Honor.

12 THE COURT: You're welcome.

13 Ms. Boyer, would you please, in the meantime, contact
14 Judge Jones' chambers. And let them know of Mr. Bundy's
15 request to see him today about release, so that he personally
16 could travel to Nevada [sic] tomorrow. Let him know that the
17 matter is pending before the Ninth Circuit, that I've indicated
18 the Court does not have jurisdiction; but he would like to
19 approach Judge Jones regarding release. Just send an
20 electronic communication to alert them that the request is
21 made.

22 I don't, Mr. Bundy, have any idea whether he's even
23 here today or can address it. But we'll at least get the word
24 to him. All right?

25 Mr. Bundy? Do you understand?

1 DEFENDANT RYAN BUNDY: I do. Yes. Thank you.

2 THE COURT: Mr. Santilli filed a motion No. 689 to
3 suppress eyewitness identification. And there was a notice
4 that the Government was taking a look at the underlying facts
5 Mr. Santilli had asserted as a matter of fact the
6 identification had been erroneous because he wasn't in the
7 District of Oregon at the time.

8 Does the Government seek an opportunity to respond,
9 or does the Government concede? What -- what's the approach
10 here on 689?

11 MR. KNIGHT: We're still examining whether indeed the
12 factual representations made by Mr. Coan are accurate. And
13 what we will do is confer with Mr. Coan after we determine if
14 indeed there needs to be a substantive response to the motion
15 or if we are withdrawing the evidence he seeks to suppress.

16 THE COURT: When can you do that?

17 MR. KNIGHT: We were contemplating taking that up in
18 the normal course, but we can report to the Court with -- in a
19 week what our position is with respect to 589.

20 THE COURT: All right. I'll get back to that too,
21 then, for scheduling.

22 I do intend to go through the entire discovery
23 dispute list, but I want to recover and return to a few other
24 points on the agenda generally.

25 It's critical for planning purposes for the parties

1 from everywhere -- from decisions having to do with how the
2 courtroom needs to be built out, the electronics to be
3 provided, the -- just the staffing and planning for trial.

4 And it's critical -- for purposes of these important
5 motions to sever, motions regarding the so-called **Bruton**
6 statements, 404(b) motions, it's critical on all of these
7 fronts that we have a -- as realistic a count of the number of
8 defendants who are continuing to plan to go to trial on
9 September 7.

10 I don't want to put any person in a position where he
11 or she doesn't want to make a public disclosure, but I want to
12 know what the parties' expectations are individually. And so
13 I'm asking each defense counsel and for the parties who are
14 self-represented, the three parties self-represented through
15 their standby counsel, to please send to me an e-mail message
16 just to me. You may copy the Government. You may copy the
17 others if you wish. But at least just to me, giving me your
18 current assessment of whether I should be counting you as
19 someone for whom I need to provide a place at trial; a desk, a
20 space, and all of that. Those space issues are very important
21 to resolve.

22 I'm not going to hold you to these things. They're
23 not binding. But they're intended to be helpful to me in
24 making some physical decisions that will affect those of you
25 who are at trial.

1 You should know, for example, the tables you're
2 sitting at are going to be replaced with something that's
3 narrower, something that takes up less space. I'm trying very
4 hard to figure out a smaller footprint, especially in light of
5 the concern about needing space for people to observe. But I
6 need to be able reliably to make some plans. So I'm asking all
7 of you to give me an e-mail message to that effect sometime
8 before Friday, noon.

9 Mr. Thorn?

10 DEFENDANT THORN: Your Honor, for the record, I would
11 like to state that I would like to withdraw my plea today at
12 two o'clock. I would also like to state that -- that in light
13 of my counsel's actions, in asking her to file several motions,
14 she hasn't. I would like to file a motion for the Court for a
15 different counsel.

16 THE COURT: Okay. Mr. Thorn, I'm going to take all
17 of those individual matters up at two o'clock today.

18 Right now I've got everybody else on a different
19 agenda. I thought you were coming at 2:00. Whatever your
20 issues are, we'll deal with them then. All right?

21 MS. SHERTZ: Thank you, your Honor.

22 (Pause, referring.)

23 THE COURT: All right. The issue concerning motions
24 to continue a deadline, the motions to sever, a deadline for
25 the Government's disclosure of **Bruton** statements, a deadline

1 for the Government's disclosure of 404(b) evidence, those are
2 all things I would like to talk about right now. And I
3 understand you have different perspectives as to what should go
4 first and who should go first. But the fact of the matter is
5 these decisions need to get made.

6 I see, in the joint filing, that the parties agree
7 that June 30 is the deadline or should be the deadline for
8 filing motions to continue the September 7 trial date.

9 Is that still an accurate statement?

10 All right.

11 MR. FEDERICO: Yes, your Honor. I believe it is.

12 THE COURT: All right. Then that will be the date.

13 The --

14 MR. KOHLMETZ: Your Honor -- your Honor, Mr. --

15 THE COURT: I'm sorry.

16 MR. KOHLMETZ: I'm sorry, your Honor. Mr. Patrick --

17 THE COURT REPORTER: I need you to turn on your
18 microphone. I can't hear you.

19 THE COURT: Turn on the microphone.

20 MR. KOHLMETZ: It is on.

21 THE COURT REPORTER: Okay.

22 MR. KOHLMETZ: I'll move it closer.

23 THE COURT: Could you move it closer to Mr. Patrick,
24 or trade places or something? There you go.

25 MR. KOHLMETZ: Just one second, your Honor.

1 THE COURT: Okay. Mr. Patrick.

2 DEFENDANT PATRICK: I've been incarcerated for 140
3 days so far.

4 THE COURT: Yes.

5 DEFENDANT PATRICK: And apparently there's 4
6 terabytes of discovery, of which I've seen about 8,000 pages.
7 I'm going through those pages about 25 thou -- 2500 pages in a
8 24-hour period of time, in doing my due diligence to be
9 prepared. But have absolute near zero access to the discovery.
10 It takes a week for me to get another box. And there's all
11 kinds of video discovery that I filed motions to try and view.
12 And I don't -- I don't know how I'm being compelled to decide
13 whether I want to sever when all I really want to do, since the
14 very beginning of time, is just view the discovery. And it's
15 nearly impossible, from my perspective. It is --

16 THE COURT: Mr. Kohlmetz, have you heard from Judge
17 Jones' chambers?

18 MR. KOHLMETZ: I have, your Honor. I explained to
19 Mr. Patrick that there is a meeting on the 22nd.

20 I am also -- I've told Mr. Patrick the arrangement
21 that I was able to make with MCIJ was the provision of one
22 bankers box of physical discovery.

23 I have about 20 of them in my office. They've been
24 exchanging back and forth. It's my understanding that some
25 other defendants may have access to three boxes. I'll be

1 working -- I'll be making a phone call, probably tomorrow, to
2 Mr. Martinez, to see if I can get three boxes to Mr. Patrick.

3 Mr. Patrick also has pending a request for a
4 paralegal-type service to allow him to review the audio and
5 video discovery that I do have on a hard drive. That funding
6 has not come through. I told Mr. Patrick, as soon as the
7 funding is approved, if it's approved, I anticipate it will
8 be -- that the -- there will be a paralegal who can access and
9 review that discovery with him.

10 It is -- I do agree with Mr. Patrick, it's difficult,
11 but we're making the best of it.

12 THE COURT: So, Mr. Patrick, your point is you don't
13 want to be bound by a June 30 date to move to continue. You're
14 trying it your best to keep up and get up to speed.

15 DEFENDANT PATRICK: I just -- I don't feel -- I don't
16 understand how I can be -- I've been asking, since the very
17 first time Mr. Kohlmetz and I met, I want access to all of the
18 discovery now. I want it as quickly as possible, and it's --

19 THE COURT: Mr. Patrick --

20 DEFENDANT PATRICK: I understand.

21 THE COURT: -- there are limitations.

22 DEFENDANT PATRICK: I understand because -- I
23 understand. I wasn't finished, but okay.

24 THE COURT: There are limitations because of your
25 custody status. Judge Jones has graciously agreed to try to

1 work through all of those issues. His chambers is in contact
2 with you through Mr. Kohlmetz. And so I urge you to continue
3 working hard on what you have. If Mr. Kohlmetz can arrange
4 getting you more volume of boxes, all of those issues Judge
5 Jones will work on to the extent there's a dispute.

6 So please raise them with him.

7 DEFENDANT PATRICK: Okay. But I'm still going to be
8 held to a -- to a 30 -- between now and the 30th --

9 THE COURT: You're going to do your best. And with
10 every deadline I set, as you've seen, lawyers file things later
11 anyway because they say they have a constitutional right to do
12 so. And I'm trying my very best to be fair on all fronts.

13 So, you know, if you want to move to continue and you
14 know it before June 30, you need to file the motion. If you
15 don't know that you do and something develops thereafter, then
16 you're going to file a motion then.

17 But, you know, I'm taking seriously the fact that you
18 are in custody. And I'm doing everything I can to ensure the
19 trial begins on time and we move through it fairly.

20 I can't -- I can't waive a magic wand, and I can't
21 make the fact that there is a lot of digital discovery here
22 anything other than it is.

23 The fact that it exists doesn't mean every digital
24 image has to be reviewed. All the people who were there know
25 what they know already because they were there, and it's not

1 like you're having to learn it the first time. But I
2 appreciate the need to know what the Government contends is
3 relevant, and I'm trying hard to get to a schedule that will
4 make that work. So --

5 DEFENDANT PATRICK: I guess it doesn't seem like in
6 140 days that due diligence is even remotely applied, I guess
7 is my -- what I'm trying to say.

8 THE COURT: I understand your point. I'm encouraging
9 you to work with Judge Jones, who's trying hard to facilitate
10 communications and access, and all of that.

11 So that's my response to that issue.

12 Go ahead and take a seat, please.

13 MR. KOHLMETZ: Thank you, your Honor.

14 THE COURT: Thank you.

15 All right. So I'm going to leave the parties'
16 agreement regarding June 30 as the deadline for motions to
17 continue.

18 I'm going to expect counsel to send me a message this
19 week, everybody -- one way or the other -- about your
20 expectations for September 7; from counsel or the defendant to
21 me. And then I'll at least have the benefit of that input.

22 I do want to talk about the order in which the issue
23 of severance, **Bruton** disclosures, and 404(b) disclosures should
24 be taken up.

25 Let me hear first from the Government with respect to

1 its view about what -- what's fair in light of the defendants'
2 perspective that they shouldn't have to move to sever,
3 shouldn't have to make that decision until the Government's
4 made its disclosures about **Bruton** issues and 404(b) issues.

5 The Government, on the other hand, is telling me they
6 don't want to have to make **Bruton** disclosures until they know
7 who's going to trial. And I get that's ideally a perfect
8 world, but I -- I frankly think the defendants have the
9 stronger argument there. That they shouldn't have to decide if
10 they want -- shouldn't have to try to make an argument that
11 they can't get a fair trial when linked with other defendants
12 until they know what the Government's really going to be
13 relying on at that trial.

14 Mr. Knight.

15 MR. KNIGHT: Your Honor, in light of the Court's
16 comments and in light of No. 3 on the e-mail the Court
17 distributed to the parties, the Government is in agreement with
18 the Court's proposal, which is that we have a June 30th date
19 for severance and continuance but that the Government is
20 required, by July 6, to file notice of **Bruton** statements. And
21 then the parties may file -- the defendants may file by July
22 15th -- may delay their filing of a motion to sever until that
23 time if leave is granted.

24 THE COURT: And what about 404(b)?

25 MR. KNIGHT: It's our position that that is an

1 inherently separate issue and that July 11th is a reasonable
2 time, at which point the Government would provide notice to
3 defendants regarding 404(b) evidence.

4 THE COURT: All right. Mr. Federico? Ms. Baggio?
5 Or someone else? To --

6 MR. FEDERICO: Your Honor, I'll try to.

7 I have been on this issue. I don't know if there's
8 unanimity. But I think the position in the status report has
9 been consistent with letters that were submitted and provided
10 to the Court in the last few months. But the majority, at
11 least, do prefer that they receive **Bruton** statements, at a
12 minimum, before the deadline for motions to sever. I'll say
13 it's not unanimous. Because, for example, on behalf of
14 Mr. Payne, I don't have any objection to the schedule the Court
15 has laid out, granting, essentially, leave to file severance
16 after **Bruton** has been disclosed.

17 But, on the other hand, I think it's fair to say the
18 majority stick to the position in the status report. They
19 prefer **Bruton** be provided prior to severance, and the 404(b)
20 accompany **Bruton** as well.

21 THE COURT: Is there a practical reason why the
22 Government can't -- cannot provide the anticipated **Bruton**
23 material; or at least the heart of it, if not all of it, sooner
24 rather than later?

25 MR. KNIGHT: Well, there are two pieces of it, your

1 Honor. One is substantive, and that is, simply reviewing the
2 material and making sure we do it in a thorough and coherent
3 fashion to give the correct and accurate notice to the
4 defendants. And the other, really, is a procedural one. And
5 that's what we've alluded to before, which is knowing who is
6 sitting in a room together in a joint trial really informs the
7 decision making about those statements. And that, of course,
8 gets to the discussion we've had all along about the order.

9 I think reasonably speaking on the substantive issue,
10 July 6 is the soonest we can get that material together -- and
11 that's what the Court has put in the email -- and get it to the
12 parties.

13 THE COURT: All right. Let me think about that
14 convergence of issues.

15 All right. I would like to turn to the issues
16 enumerated in the defense -- in the joint discovery chart --

17 MR. MERRITHEW: Your Honor?

18 THE COURT: I'm sorry. Yes, Counsel.

19 MR. MERRITHEW: On behalf of some of the folks that
20 have already waived speedy trial and asked for a continuance
21 and that continuance has been granted, just a point of
22 clarification.

23 I would ask that that order specifically reflect that
24 those severance motions, if they are contemplated by that
25 second group, not be due by July 15th.

1 THE COURT: I will enter an order that any party
2 who's waived speedy trial with respect to September 7, is
3 relieved from the motion to sever deadline because your
4 calculus will be very different than the ones who are facing
5 the actual choice earlier.

6 Okay. Let's go to the document 699, which summarizes
7 contested discovery issues, and the like.

8 I have to confess, Counsel, I was a bit surprised to
9 see this many substantive contested discovery issues after
10 having received what seemed like a representation from you in
11 your joint discovery reports that discovery was not generating
12 issues. And, thus, I did relieve you from filing weekly
13 discovery status reports.

14 That relief is now gone. By the end of today, you're
15 going to be back into a weekly discovery status report issue on
16 any matter that is not addressed with a different schedule this
17 morning, because there's a lot in dispute here. And I need to
18 know about these issues as they're coming up, not en masse with
19 12 very substantive matters.

20 So let's start first with what is your first item,
21 and you called it: Availability of all seized digital media to
22 all defendants.

23 My question here was whether it would be a solution
24 to this problem if all defendants agree that their media might
25 be shared with all of the defendants. It appeared in part the

1 Government was concerned that it has access to one defendant's
2 media who might have private information, and it is concerned
3 about disclosing that media to another defendant.

4 If all the defendants agree that all of them could
5 see all of it, that would moot the Government's point, if I'm
6 understanding it.

7 Is that one of the Government's points?

8 MR. BARROW: That's correct, your Honor. If that was
9 the case, it would moot that issue.

10 THE COURT: So let me ask Ms. Baggio this question:
11 To please undertake conferral with all defendants and see if
12 this issue cannot be mooted by a stipulation to that effect.
13 And then the Government can provide that which it was concerned
14 about providing.

15 If that does not solve the problem, then I want
16 another practical solution for the defendants to suggest.

17 And perhaps one's coming right now. Counsel.

18 MS. WOOD: Your Honor, I spoke with Mr. Barrows [sic]
19 this morning. More to follow up on not just the digital
20 devices but the Facebook and raw data and I think the Nevada
21 discovery. The ones that the defense had raised the same needs
22 for.

23 THE COURT: Right.

24 MS. WOOD: And my understanding in terms of the
25 digital devices, in particular, is that the Government has been

1 approached by -- and I don't know who, but some defense counsel
2 who have specifically requested that that information not be
3 provided. So I --

4 THE COURT: I think you all need to be frank with one
5 another, and talk this through. And if the issue can be
6 resolved among a group of defendants, that group -- defendants
7 A through K -- all agree that their devices may be shared with
8 everybody, that moots part of it.

9 I want a solution that gets you past this
10 time-consuming roadblock.

11 MS. WOOD: And the other thing I would say, your
12 Honor, is that the Government -- although it's not in writing
13 there -- agrees that they would comply with the alternative
14 that was proposed by the defense; that they give us any
15 co-conspirator statements which they would be using, the Rule
16 16 material, and **Brady** material. And so --

17 THE COURT: So, Ms. Wood, I'm assigning to you the
18 responsibility to continue conferral on those three categories.

19 To the extent you can acquire agreement among all,
20 great. To the extent there's an alternative to which the
21 parties agree and resolve it, one way or the other, you're the
22 one in charge of marshalling the positions. If there is an
23 agreed form of order even for some, then submit it. And at the
24 same time, submit a new statement of "Here are the remaining
25 issues," a new joint statement, and here are the positions.

1 And then I can move to what remains in dispute.

2 But that ought to -- we ought to be able to solve
3 this part by agreement, I would think.

4 MS. WOOD: I will undertake that, and I take that to
5 mean Ms. Baggio is relieved from the Court having her --

6 THE COURT: On these particular issues. Since --
7 since you spoke up, since you were speaking with Mr. Barrow on
8 the issues, you take the lead on that, and I'm sure Ms. Baggio
9 wouldn't mind.

10 MS. WOOD: I'm happy to do that, your Honor.

11 THE COURT: Thank you.

12 MS. WOOD: And --

13 THE COURT: Pardon me?

14 MS. WOOD: Would you like me to do the same as to the
15 Facebook raw data --

16 THE COURT: The three items you enumerated while you
17 were on your feet. You're going to confer --

18 MS. WOOD: All right.

19 THE COURT: -- with your members here, and then back
20 with the Government. And to the extent you can reach agreement
21 that resolves all of it in the form of an order, you'll tender
22 it. If you reach an agreement that resolves part of it in the
23 form of an order, you'll tender it.

24 And to the extent disputes remain on those three
25 categories, you'll give me a stipulate -- a joint updated

1 discovery chart like this, that says this is still in dispute,
2 here are our positions, we need a ruling.

3 And then I'll decide if I need argument.

4 MS. WOOD: And, your Honor, could I have leave to get
5 that done by next Friday, the 24th?

6 THE COURT: Yes.

7 MS. WOOD: I have other obligations --

8 THE COURT: That is perfect. That is your deadline.

9 And so just to be clear, that addresses item No. 1 on
10 the chart. It's got also this Nevada discovery, item No. 2?

11 MS. WOOD: Yes, your Honor.

12 THE COURT: And then there was another --

13 MS. WOOD: The Facebook, which is on page 7 of the --

14 THE COURT: And that is by count item No. 7.

15 So in the order I issue today, I'll just make general
16 reference to those items; will be addressed in the manner we've
17 just put on the record.

18 MS. WOOD: Understood, your Honor.

19 THE COURT: Thank you, Ms. Woods.

20 Yes, Mr. Mumford.

21 MR. MUMFORD: Am I to understand that -- by that
22 then, that the Government's certification that their discovery
23 is substantially complete did not include --

24 THE COURT: Mr. Mumford, you need to talk -- you need
25 to talk to opposing counsel. I'm not going to go back to that

1 certification question one more time. You need to do your own
2 due diligence, your own discussion, and your own submission as
3 I have directed.

4 All right. Let's move to item No. 3 on that chart.
5 It's titled, Large volume of e-mail messages under review as of
6 5-18-16 that Government believes will not be discoverable.

7 I don't know what this means. So someone needs to
8 tell me what -- what the -- what the subject even means, and
9 then what -- what the positions are.

10 Who can speak to this?

11 Ms. Baggio? Ms. Wood?

12 MS. WOOD: Your Honor, we're just basing the large
13 volume of e-mails that the Government thinks is not
14 discoverable on their statement in the status report for
15 discovery that was filed, I believe, on the 16th.

16 THE COURT: Well, let's ask them --

17 MS. WOOD: So let's ask them first.

18 THE COURT: Okay. What does this mean?

19 MR. BARROW: Your Honor, the issue was raised by
20 Ms. Wood, so I thought -- that's why I thought she may
21 articulate it better than I did.

22 But my understanding is that this statement about the
23 large volume of e-mail messages under review as of May 18th is
24 it is a reference to a statement that we made in the May 18th
25 status report about things that we were still working on.

1 We certified substantial compliance, but we explained
2 that we believed that our duties were ongoing. And there were
3 several categories of information that we were continuing to
4 work on. We have continued to review e-mails, and we've
5 produced e-mails.

6 My understanding is that this report reflects
7 something different. And that's a request to disclose the
8 agencies and the positions and the authors and recipients of
9 e-mails. And -- and --

10 THE COURT: I'm confused.

11 You're saying e-mails have been produced.

12 MR. BARROW: Correct.

13 THE COURT: And your understanding that the
14 defendants are asking for you to identify who the author or the
15 recipient is on these various e-mails? Is that what we're
16 getting at?

17 MR. BARROW: My understanding is that the defense is
18 alluding to the fact that we noted there were a lot of e-mails
19 in the case. We, in that report, talked about reviewing them
20 and producing the e-mails that are discoverable.

21 My understanding of this issue is they're asking us
22 to take a look at the e-mails that we don't believe are
23 discoverable, and providing some identification regarding those
24 e-mails. Perhaps which agency generated the e-mails, who the
25 senders and receivers are. But I don't have a better

1 understanding of that issue than I just said.

2 THE COURT: Then let me hear from you, Ms. Wood.
3 What is he getting at? What are you concerned about?

4 MS. WOOD: Well, your Honor, our concern, as the
5 Court can see from the various motions to compel production of
6 discovery, is that the defense maintains that certain discovery
7 that we know exists -- because we've seen bits and pieces or
8 suggestions of it in discovery -- the Government -- we say it's
9 material; we need it under Rule 16; we need it material to our
10 defense; we need it under **Brady**. And the Government says, No,
11 we don't agree. It's not material.

12 And so that's our concern. If the Government has
13 e-mails and they're going to decide they're not discoverable --
14 well, they're in their possession and control. If we don't
15 have at least some understanding of what they're claiming isn't
16 discoverable, we're not in a position --

17 THE COURT: Can you give me any authority at all,
18 Ms. Wood, for the proposition that a district judge is supposed
19 to require the Government to itemize evidence it determines is
20 not discoverable, like it does happen on the civil side --

21 (Defendant Cavalier exiting courtroom.)

22 THE COURT -- and a privilege log, or something on
23 that order? Do you have any authority under Rule 16 of that
24 obligation?

25 MS. WOOD: Your Honor, the only thing I'm trying to

1 do is to make an informed decision as to whether we should be
2 asking the Court to conduct in-camera review --

3 THE COURT: Right.

4 MS. WOOD: -- of information that would otherwise --

5 THE COURT: As -- as reflected, this issue is not
6 ripe for me to take any more time on.

7 MS. WOOD: Correct.

8 THE COURT: I'm adding it to your list.

9 MS. WOOD: Fine.

10 THE COURT: Because you're the one -- the
11 spokesperson on it.

12 To the extent you -- you, on behalf of your client or
13 generally on behalf of other defendants, believe there is a
14 discovery dispute in this area, continue your conferral. If
15 you can resolve it, let me know. If you can't, give me a more
16 precise articulation of what the issues are and the positions,
17 so that I can rule on them.

18 MS. WOOD: We'll do that, your Honor.

19 And I've spoken with Mr. Barrow, and it's -- one
20 problem has been the crush of time on all parties. And so it
21 has limited what normally would be a more thorough discourse
22 and resolution.

23 We just -- the Court asked to be alerted, and that's
24 really what we intended the do here, is alert the Court.

25 THE COURT: All right. And from alert, now we're

1 going into substance. And can you do this also by the 24th?
2 Include it with the discussion? And if you can't, you can ask
3 for more time.

4 MS. WOOD: I will do that, your Honor. And perhaps
5 at least one other person on the defense team will decide to
6 help with some of these issues, so --

7 THE COURT: You can pick a delegate to help you.

8 (Defendant Cavalier reentering courtroom.)

9 THE COURT: Thank you.

10 All right. Let's move to item No. 4. There's been
11 now a motion filed regarding item No. 4. So I want to know
12 what the Government's expectation is regarding a response.

13 Just the regular round 2 motion?

14 MR. BARROW: Yeah, your Honor. I would ask that they
15 be set with that, in the regular course.

16 THE COURT: It seems to me the argument is
17 articulable pretty concisely and should be made way sooner than
18 weeks from now because it's an important issue. It needs to
19 get articulated.

20 Can -- can you file a response to the discoverability
21 issue? A response to that motion by this Friday? The argument
22 is, is it discoverable or not? It's a straightforward
23 argument.

24 MR. BARROW: We can do that, your Honor.

25 THE COURT: And on this one, who's the filing lawyer

1 on this one?

2 Yes, Mr. Olson.

3 MR. OLSON: Yes, your Honor.

4 THE COURT: If the Government files a response
5 Friday, can you file a reply by next Wednesday?

6 I would like to look at the written record first
7 before I decide whether we need to redeem everyone for oral
8 argument.

9 MR. OLSON: Yes, your Honor.

10 THE COURT: Okay. So that will be the briefing
11 schedule for that issue.

12 Item 5 is also the subject of a motion.

13 So I need a response and a reply deadline here. This
14 one, I think, is not quite as straightforward, although it --
15 again, the Government's principle is -- is articulated in
16 the -- in this and the other report.

17 On the one hand, it seems to me that if -- if the
18 argument defendants want to develop is that they were justified
19 in carrying firearms during the occupation because of their
20 concerns regarding law enforcement and federal agent response
21 with the use of force, that relevance exists when the
22 occupation -- as you've all called it -- began.

23 And whatever the defendants saw or observed regarding
24 the potential for law enforcement force was what they saw or
25 observed. The defendants know what they know. The defendants

1 know what they saw. The defendants know what they were seeing
2 in media about what the response was going to be.

3 So the idea that the Government has to provide
4 discovery around this is -- is an issue I'm having trouble
5 with. So what I would like is a Government's response and a
6 brief in reply. And, in theory, it would be nicer if we could
7 do it sooner rather than later.

8 MR. BARROW: We can respond --

9 THE COURT: I know it's Wednesday. When can you do
10 it?

11 MR. BARROW: Let's put it on Friday.

12 THE COURT: All right. And then, Mr. Olson, are
13 you -- no, this is Ms. Wood.

14 MS. WOOD: That's mine, your Honor.

15 THE COURT: Okay. Can you do a reply then, too?

16 MS. WOOD: I am in Medford Monday and Tuesday, so I
17 would like to have until Friday, the 24th --

18 THE COURT: You are doing a lot. Do you want until
19 the following Monday?

20 MS. WOOD: That would be -- that would be good.

21 THE COURT: In which case you can file your
22 opposition this coming Monday. Because Ms. Wood is going to be
23 busy anyway. All right? So you file the opposition on -- on
24 this show-of-force display issue by Monday, next.

25 And then, Ms. Wood, your reply will be the Monday

1 after. I want to review the arguments before I decide whether
2 we have to have oral argument on that one.

3 MS. WOOD: Fine, your Honor.

4 THE COURT: All right. Now, the item 6 on the chart,
5 information related to witness identification practice and
6 procedure. It seemed to me the Government should be doing a
7 search to ensure that it has produced all the photographs that
8 were used in connection with identifications. That would seem
9 to me discoverable.

10 So if the Government searches and then produces all
11 of the photos that it used in -- its agents used in the course
12 of identification, that would go a long way to resolving this.

13 If the Government says we've searched, we've
14 identified this universe of photographs, we've produced all
15 that we have but there is a subset of that universe we don't
16 have anymore and we can't produce it because no record was kept
17 of them, then that would be a certification that they've done a
18 search; that they've produced that which was discoverable.

19 So I'm inclined to simply direct the Government to
20 ensure by the representation of an officer of the court in the
21 record that a diligent search was made; that all the photos
22 used in identifying a witness in the course of the
23 investigation have been produced or at least identified. Of
24 those identified, the subset that don't exist anymore are
25 identified, too. And we don't have them, or why, or whatever.

1 An explanation of what the state of the discovery is. And that
2 the remainder have been produced. It seems to me that would
3 solve the problem.

4 But am I missing something, first, from the
5 defendants' perspective?

6 Who's speaking on -- yes.

7 MS. HARRIS: Good morning, your Honor.

8 THE COURT: Counsel.

9 MS. HARRIS: I don't have too much to add. I think
10 the Court has accurately summarized our position.

11 One -- I do think that the certification should
12 include some kind of explanation of, you know, sort of what --
13 what happened; what's missing and what happened to it.

14 THE COURT: Right.

15 MS. HARRIS: But I also think, though, that we're in
16 a -- sort of an unusual position in that so many of our
17 clients' images and likenesses were broadcast very widely
18 before they were interviewed by law enforcement agents. And so
19 this is kind of an important and evolving issue.

20 We are in the position of having to rely exclusively
21 on the Government's report to know whether witnesses were even
22 shown a photograph.

23 THE COURT: Right.

24 MS. HARRIS: And so I do think that the certification
25 should include -- or should apply to sort of all witness

1 interviews. The agents are in the best position to know
2 whether or not photographs were made a part of the interview
3 process.

4 THE COURT: Well, what I'm contemplating -- tell me,
5 Ms. Harris, if I'm not addressing your point.

6 It seems to me the Government should be able to say
7 after, again, checking in with all of the witnesses, what
8 photos were displayed for identification purposes.

9 Report back to me what were displayed, and where are
10 they? Show the photos. And if they don't have them and can't
11 document them, explain: I can't, I don't have it, I didn't
12 keep a record, whatever.

13 Is that what you're saying?

14 MS. HARRIS: Yes. And also relevant to the beginning
15 of these proceedings, because some of these photographs have
16 been identified and the Government has said, Thank you for
17 identifying those, we will produce them, we don't have them
18 yet. Should some of those photographs -- and I'm thinking of
19 my client in particular. Should some of those photographs,
20 upon production, give rise to a motion to suppress, I would
21 request leave of the Court to file that motion if appropriate
22 at that time.

23 THE COURT: I'll include in today's order omnibus
24 language to that effect.

25 If -- you know, the Government's position is they

1 made substantial -- they -- they produced substantially the
2 discovery, and yet the point is made that it's still
3 continuing. You can't be required to make a motion on
4 something you didn't have. We'll have something on that
5 ground.

6 Now, Mr. Barrow, to the solution I'm proposing, is
7 there a problem?

8 MR. BARROW: No, your Honor.

9 I believe we -- I have attempted to make that
10 certification in court today, but the defense suggested we have
11 until June 30th.

12 I can double our, you know, checks and endeavor to
13 make sure there are no errors in that certification. And I
14 would ask that we be allowed to --

15 THE COURT: All right. What I would like you to do,
16 Ms. Harris, is to continue to confer on this line with
17 Mr. Barrow, to ensure you're on the same page. But that will
18 be the resolution of this issue, unless you tell me before
19 June 30 that there is a problem --

20 MS. HARRIS: Thank you.

21 THE COURT: -- in a joint submission.

22 MS. HARRIS: Okay. Thank you.

23 THE COURT: Mr. Bundy, I have an electronic message
24 from Ms. Boyer that it does not appear Judge Jones's chambers
25 is in session today. There's no one there.

1 DEFENDANT RYAN BUNDY: Okay.

2 THE COURT: So there's not any more I can do about
3 that particular issue.

4 DEFENDANT RYAN BUNDY: You have the authority to --

5 THE COURT: I'm not going to release you, sir, for
6 the purpose of going to the Ninth Circuit because you did not
7 seek from the Ninth Circuit even an effort to be there.

8 So we're not going to deal with it here.

9 DEFENDANT RYAN BUNDY: I have sought an effort,
10 though.

11 THE COURT: Well, I'm not in a position to have
12 jurisdiction over the matter. So your motion, if addressed to
13 me, for release to the Ninth Circuit is denied for the reasons
14 I've already stated. But I'm just telling you, passing on the
15 message, Judge Jones is not there. So go ahead and take a
16 seat, please.

17 MS. SHERTZ: Your Honor, if I may -- it's certainly
18 not my issue. I don't mean to complicate things. But I was on
19 autopilot when I came to court, and stopped at 10, and he was
20 on the bench. So --

21 THE COURT: They are not on the docket, so I can't --
22 I can't --

23 MS. SHERTZ: I was just trying to share some extra
24 information --

25 THE COURT: All right. So, Ms. Ludwig, if you can

1 reach them when we can't, you may. But I'm simply passing on
2 what I know. And I know you have to leave.

3 MS. LUDWIG: May I be excused to go see if -- to
4 interact with Judge Jones's staff in person?

5 THE COURT: Yes. You may. You may.

6 And Mr. Bundy, you're doing fine on your own.

7 (Laughter.)

8 THE COURT: No offense, Ms. Ludwig. She's doing
9 fine, too.

10 (Ms. Ludwig exits courtroom.)

11 THE COURT: Okay. Can we get back to what we were
12 working on, which is -- I think I've just resolved a mechanism
13 for item 6. Item 7 was the Facebook issue.

14 Now I need to be told about item 8. Someone needs to
15 tell me what this so-called Guardian database is and what it
16 is -- how the issue arises. The response --

17 Can -- can I have quiet, please.

18 The response that the Government reflected about not
19 being aware is not a sufficient response in any event because
20 it doesn't represent a certification that information has been
21 sought and does not exist. So I want to know what the problem
22 is.

23 But you need to start at the beginning, please,
24 Mr. Kohlmetz.

25 MR. KOHLMETZ: Your Honor, I agreed yesterday to

1 assist Ms. Baggio in this. And so I've done a little bit of
2 research. It is kind of an evolving issue. But let me just
3 explain.

4 The Guardian and eGuardian database, as I understand
5 it from publicly filed documents that are available online, the
6 Guardian program is an FBI information, investigatory sharing
7 program. It shares law enforcement investigatory information
8 between local, state, and federal law enforcement agencies.

9 The -- there's two components. There is an internal
10 FBI network called Guardian, and then there's the broader
11 multi-jurisdictional network called eGuardian. So when I refer
12 to Guardian, I'm referring to both.

13 The -- the system is designed to collect a wide
14 variety of information from all local, state, regional, and
15 even private sources.

16 THE COURT: And you're saying who has access to this?

17 MR. KOHLMETZ: The FBI, your Honor.

18 In the discovery, there have been repeated
19 references, particularly when noting interviews of subjects.
20 In the applications for search warrants and in the application
21 for court orders, there have been references to information
22 contained in the Guardian database as well as other databases
23 that I'll get to in a minute.

24 There are also references in the general
25 investigation to checking the Guardian database for information

1 related to this person, or this place, or this activity.

2 The databases, in addition to Guardian, that we would
3 be seeking, one was already mentioned by Ms. Baggio, which was
4 the DIVS, which is the data inventory -- give me one minute,
5 your Honor. And visual -- Data Inventory and Visualization
6 Database, which is maintained also by FBI.

7 It interacts with and is designed to scoop up
8 electronic information primarily under FISA, but it also has
9 been broadened and -- to nonterrorist-related electronic
10 surveillance. The FBI has access to that system as well.

11 The third critical one that I seek is also ORION,
12 which is another FBI database. It is the Operational Response
13 and Investigative Online Network.

14 THE COURT: With respect to the databases you're
15 describing, and others, what is it you're seeking from the
16 Government as to which a dispute has arisen?

17 MR. KOHLMETZ: Your Honor, it's clear from the
18 discovery that information contained in these databases was
19 utilized, was referenced both in the general investigation and
20 in factual assertions made in support of affidavits and
21 application for search warrants and orders. These databases
22 are incredibly comprehensive and incredibly powerful in
23 amalgamating information and are term searchable. It is clear
24 to me that the FBI has repeatedly term searched these databases
25 during the investigation of these defendants.

1 THE COURT: What is it -- what is it --

2 MR. KOHLMETZ: I'm asking the Government term search
3 these databases for all of these defendants, the -- the -- the
4 Government witnesses that they -- as they are identified, and
5 any human sources of information to ensure that we have --

6 THE COURT: You're going to have to file a motion on
7 this, a specific --

8 MR. KOHLMETZ: And Mr. Barrow has told me that. You
9 asked for information, so --

10 THE COURT: Oh, no. I thought I was going to be able
11 to work through this to some direction and get it resolved.
12 It's clear this is a substantive and complicated matter. The
13 motion needs to get conferred, filed after complete conferral.

14 MR. KOHLMETZ: Yes.

15 THE COURT: You need to narrow the dispute as best
16 you can, and then file a motion and a response.

17 When can you file your motion?

18 MR. KOHLMETZ: Not by this Friday. By Friday next.

19 THE COURT: June 24. Yes, that will be your motion
20 deadline.

21 And a response one week, July 1.

22 MR. BARROW: That will be fine, your Honor.

23 MR. KOHLMETZ: Mr. Barrow will be my conferral point
24 on that.

25 THE COURT: Yes. And then once I see the motion and

1 the response, I'll determine if a reply is needed or if we just
2 go right to argument. All right?

3 MR. KOHLMETZ: Thank you, your Honor.

4 THE COURT: Item No. 8, then, is covered that way.
5 Item No. 9 is database collection on defendants' and Government
6 witnesses if relevant material.

7 Is this the same issue?

8 MR. KOHLMETZ: That's the same issue, your Honor.

9 THE COURT: All right. Thank you.

10 And then nonTitle III FISA monitoring and
11 communications, is that the same? Or is that something else?

12 MS. BAGGIO: Your Honor, this one is mine, and this
13 is something else.

14 THE COURT: Okay.

15 MS. BAGGIO: Your Honor, I have made a request. My
16 initial request was on May 20th. But then, again, a separate
17 one on June 9th, for the Government to disclose to us whether
18 the -- the investigation involved warrantless monitoring. And
19 I have provided a letter explaining the basis for my request,
20 to the Government.

21 And our position is that if the Government utilized
22 warrantless monitoring based perhaps on a theory that the
23 defendants did not have an expectation of privacy while they
24 were within the refuge buildings, that we're entitled to any
25 communications under Rule 16; any statements by the defendants

1 that were seized or obtained during the occupation.

2 THE COURT: Give me an example, would you, please.

3 MS. BAGGIO: Thank you, your Honor.

4 For example, what -- what we understand the
5 Government is able to do is use a computer or a telephone and
6 turn on a listening device. Or another example would be based
7 on the discovery received and reviewed by me in this case, the
8 Government seemed to have known that it was a possibility that
9 this was going to take place. If that is true --

10 THE COURT: "This" being --

11 MS. BAGGIO: The -- the -- the entry into the
12 buildings. I'm sorry, your Honor. The entry into the
13 buildings. And if that is true and the Government placed
14 listening devices within the refuge or had them there already
15 for security purposes but turned them on to listen to what --

16 THE COURT: So you're trying to find out, for
17 example, if there was a nonTitle III or nonwarrant-based
18 listening device used by the Government, thus, in the
19 investigation as the facts were developing, and that kind of
20 thing?

21 MS. BAGGIO: That is correct, your Honor. And we
22 believe that it's discoverable under Rule 16, but I would also
23 submit that it's even discoverable moreover to my client,
24 Mr. O'Shaughnessy, because of the information we know that the
25 discussions that took place on the refuge, when he visited

1 there, would have been exculpatory in nature.

2 THE COURT: Let me hear what the Government's
3 perspective is on this.

4 MR. BARROW: Your Honor, I didn't understand the
5 request when it came in. And I had a conversation with
6 Ms. Baggio, and she gave me the following example.

7 She believed that after leaving the courthouse, on
8 one of the occasions, she was followed closely by someone. And
9 that that was an example of nonTitle III interceptions.

10 What I told her -- and what we represent -- is that
11 any defendant statements that are discoverable under Rule 16
12 will be produced. And we've produced many such statements.

13 They exist in many forms. For example, if the
14 defendants broadcast from YouTube, and we've obtained it from
15 the Internet, we have produced that in discovery. So in every
16 instance that I'm aware of, that we have a defendant's
17 statement, we've produced it under Rule 16. If we find out
18 tomorrow another example of a defendant's statement that comes
19 in from any form, we'll produce it.

20 So in our response -- you know, I was trying to
21 allude to the fact that we think we've complied with that
22 request. And I'm not aware of any statements that we haven't
23 produced. And, again, in this -- just the very nature of
24 this -- this case, we'll continue to look for them and produce
25 them when they're available.

1 But the notion that there was some exotic mechanism
2 for collecting information, it just isn't -- it isn't accurate.

3 THE COURT: Then it seems to me that the Government
4 should be able to do what you've been directed to do on some
5 other items this morning. Make a thorough review of -- through
6 your agents, and otherwise, to ensure there are not existing
7 recordings or other interceptions that are nonTitle III-based,
8 nonwarrant-based, and then make a certification as an officer
9 of the Court that there aren't any other statements of any
10 defendant that have not been produced. It seems to me you
11 should be able to do that.

12 Would that address the issue?

13 MS. BAGGIO: It would, your Honor. Thank you. And
14 just -- the Government responded with regard to someone
15 following me. That was my first request. The Government
16 responded, That didn't happen. I'm not following up on that,
17 your Honor. I'm referring, from Mr. Barrow's reference, to the
18 subsequent letter of June 9th, that detailed these other
19 reasons why we have concerns about monitoring.

20 THE COURT: And the reasons you have concern are
21 you're thinking it's possible, but you don't have evidence that
22 it happened?

23 MS. BAGGIO: That is correct, your Honor. That is
24 correct.

25 THE COURT: So with the example counsel cited today,

1 and the example in her letter of June 9th, I want the
2 Government to go back and to confer with all of the relevant
3 agents to ensure there is not existing any other collection or
4 record of a statement of the defendant in the possession of the
5 Government or its agents here, and then so certify.

6 Can you do that by the 24th?

7 MR. BARROW: Your Honor, we would ask for a little
8 more time on that because of the complexity of that issue.

9 THE COURT: All right. July 1.

10 MR. BARROW: That will do, your Honor.

11 I want to raise the possibility, however, that on
12 July 3rd, someone posts something to the Internet that we can
13 collect --

14 THE COURT: Well, Counsel, you know how to certify a
15 true statement. It's true through the date it's made. And you
16 continue to say, as you have, that to the extent there is new
17 information that comes to the Government's attention,
18 notwithstanding the Government's best efforts, whether it
19 preexisted or not, if you become aware of it, you will have to
20 disclose it.

21 MR. BARROW: We will, your Honor. Thank you.

22 MR. MUMFORD: Your Honor, may I --

23 THE COURT: Yes, you may.

24 MR. MUMFORD: May I just address -- I'm trying to be
25 helpful here. But it seems to me that these -- the issues that

1 we're -- we're talking about are -- are both whether attempts
2 were made, whether evidence was collected under these -- these
3 different things. And I would just ask -- I think that I hear
4 our defense side saying, We want to know, first of all, whether
5 the defense -- whether the attempts were made to collect
6 information under this, and whether there is any responsive
7 information that should be produced under Rule 16. So I would
8 ask that the certification in that respect cover -- cover both
9 of those.

10 THE COURT: You may confer with counsel about that
11 first.

12 MR. MUMFORD: Okay.

13 THE COURT: Right now the order goes to looking into
14 that which exists, as opposed to that which might have existed
15 but doesn't exist.

16 All right. Item 11, then. Information regarding
17 informants, undercover agents, provocateur, et cetera.

18 The Government said it would produce reports
19 regarding this information no later than July 1. I assume
20 that's acceptable to the defense, and you'll let me know if
21 there's an issue beyond that. Or no?

22 MS. BAGGIO: Your Honor, I read the response to say
23 that it's just related to confidential sources. And with the
24 Court's intent to issue the omnibus ruling, that we'll be able
25 to raise subsequent motions, based on subsequently disclosed

1 evidence. That's fine.

2 But I do also believe that there's a separate
3 question about the use of media sources, as well as the agent
4 provocateur.

5 THE COURT: All right. Then you all need to confer
6 some more about this. All right?

7 If there's an issue, you need to give me an updated
8 joint statement by next Friday, June 24, on this issue 11.

9 If -- confer, get more specific.

10 If there's a problem you can't resolve by agreement,
11 then tell me and I'll make a ruling or I'll get you back for
12 more detail on it.

13 MS. BAGGIO: On June 24th that's due?

14 THE COURT: Yes.

15 MS. BAGGIO: Thank you.

16 THE COURT: Okay. Item 12 is called "propaganda."

17 I don't know what this issue is. So, Ms. Baggio,
18 maybe you can tell me what the issue is, and then I'll hear
19 what the Government's issue is.

20 MS. BAGGIO: May I just have a moment to write down
21 what you said about the last --

22 THE COURT: Of course. And we'll try to issue an
23 order, hopefully today or tomorrow, to confirm dates.

24 MS. BAGGIO: Your Honor, the last request is based on
25 publicly released e-mails through Governor Brown's office that

1 include FBI e-mails referring to efforts to grab and own social
2 media.

3 And our perspective is that this is discoverable
4 for -- on multiple levels. But we believe it's material and
5 relevant to the defense in general. But we also believe it's
6 relevant to the defendants to be able to raise and supplement
7 the record as to a motion for change of venue because if the
8 Government is trying to affect public perception of events as
9 they're happening, that would be relevant to the way the public
10 receives information about those events.

11 So that's the basis for the request, your Honor.

12 THE COURT: Why does the Government say it doesn't
13 believe this is information that's discoverable?

14 MR. BARROW: Your Honor, I first heard of this issue
15 yesterday, and I talked to Ms. Baggio about it for the very
16 first time yesterday.

17 I don't precisely know what she's referring to. She
18 referred to the same e-mail she just described. I have not
19 seen that e-mail. My understanding is that is an e-mail --

20 THE COURT: Then I'm directing you to continue
21 conferral on that. The same deadlines I just set up for the
22 last issue, item 11, apply here. More conferral. If there's
23 an issue, then I need to know about it. But you're obviously
24 not ready to go there.

25 I want to turn now to the list of what's called

1 uncontested but unproduced discovery.

2 Who's -- who's speaking to these things? It looks
3 like basically what are needed here are deadlines for the
4 Government to produce that which is allegedly uncontested.

5 Ms. Harris, is that you? Or, Ms. Baggio, is that
6 you?

7 MS. BAGGIO: I'll be glad to represent on this one,
8 your Honor.

9 THE COURT: All right.

10 MS. BAGGIO: This was my best effort to just record
11 items that I understood the Government has just said, We
12 haven't got them to you yet, but we're not fighting you as to
13 whether or not we're going to produce them.

14 THE COURT: But you want a deadline?

15 MS. BAGGIO: That is correct.

16 MR. BARROW: Your Honor, I'm sorry. We have
17 articulated our best estimate and when we could comply with
18 that; in each of these individual issues. There are a couple
19 of issues in this list that -- for example, the first one, I
20 believe, is an issue that Ms. Wood has raised that I don't
21 believe involves what the Government has provided. I'm not
22 entirely sure about that.

23 But if we go through the list below that, images of
24 digital media, some of that raises the same issue that we
25 talked about at the beginning of the hearing.

1 THE COURT: Right. Right.

2 MR. BARROW: In terms of the big categories here that
3 we are trying to get out the door, that involves really the
4 forensic reports from digital media and the forensic reports
5 from the Facebook searches. And we've talked about trying to
6 make those available within a week.

7 THE COURT: Ms. Wood, let me ask that when you're
8 conferring and working up to narrow the issues assigned from
9 the disputed list you notify me if anything that's called
10 uncontested actually is contested and has to be taken into the
11 reports you're making there.

12 In other words, there is some overlap here, and I'm
13 not clear what it is people are asking me to rule on today.

14 I'm going to set a deadline with respect to dates,
15 where the Government's promising production but hasn't yet, so
16 that we just get the matter moving. And I'm going to say July
17 1.

18 And -- and, again, the order from today will indicate
19 that with respect to new matter about which the parties didn't
20 know -- defendants particularly -- then you have leave to seek
21 leave to file another motion, despite the deadlines already
22 set.

23 So I think that should take us through the discovery
24 report, unless there's something else someone wants to raise on
25 discovery before we move on to other issues.

1 MS. WOOD: Your Honor, I just want to ask if in lieu
2 of the discovery committee filing a report next Wednesday
3 saying we're going to tell you all of this stuff on the 24th,
4 if we could just have the 24th --

5 THE COURT: That was an idle threat. That is not
6 being acted on just now.

7 (Laughter.)

8 MS. WOOD: All right. Thank you.

9 THE COURT: -- since you've been assigned a specific
10 task.

11 But what I can't have happen is the next time we have
12 a status conference that I hear for the first time that there
13 are 12 significant disputed issues. That cannot happen.

14 If there are problems, I need to know about them long
15 before next July's hearing. So I -- I think most of these
16 issues are coming under your -- your auspices here. But if
17 there are any discovery issues -- any that any party has a
18 problem with -- let me know. You're free to file a joint
19 statement after conferral that says you need a ruling.

20 Let me know, and I'll rule on it. It doesn't have to
21 wait now until the status report, so --

22 MS. WOOD: And, your Honor, just so the Court
23 understands -- and I'm sure you read through the supplemental
24 information --

25 THE COURT: Yes.

1 MS. WOOD: -- part of it is just there hasn't been
2 enough hours in the day for us to review and identify issues.
3 And so --

4 THE COURT: And I'll just respond to that, that
5 I'm -- I'm pushing us all hard because I respect the rights
6 asserted by the parties to a speedy trial and a fair trial.
7 And we're all human. We're doing the very best we can on many
8 fronts. I want to continue to commend all counsel for these
9 hard efforts, but that doesn't mean it can't be done. Just
10 because the record includes a lot of material doesn't mean
11 every digit has to be reviewed by every lawyer.

12 The people who were there know what happened. They
13 know what they saw, they know what they heard, and they know
14 what to look for. And you're doing a great job thinking beyond
15 the box and trying to get the Government to either disclose
16 that there's more that you haven't thought of or assure you
17 that it doesn't exist. But, in the end, it's not as if the
18 parties don't know fundamentally what happened.

19 The real question ultimately is what does it amount
20 to legally. Was there an illegal conspiracy? Or was it the
21 exercise of a First Amendment and a Second Amendment right as
22 you've all been telling me? That will be decided, ultimately,
23 by a jury. So let's just keep working forward.

24 MS. WOOD: We'll do that, your Honor. But I'm sure
25 the Court knows -- that I've learned over 35 years of

1 experience -- is that defense counsel can't just rely on what
2 their clients remember about events and --

3 THE COURT: I know. And you're working as a team and
4 you're coming up with ideas as a group that you wouldn't have
5 individually. That's to be commended. And I also note that
6 you have and your client have opted out of the September 7th
7 trial date. So --

8 MS. WOOD: (Nods head.)

9 THE COURT: -- the decision was made; you move on.

10 MS. WOOD: Thank you.

11 THE COURT: All right. I want to take about a
12 ten-minute recess because I want to go back and, on my own, get
13 some dates for recitation back to you. And I just want to have
14 a -- the opportunity to review my notes, and do it in the
15 context of a chronology.

16 So for about ten minutes, we'll be in recess, and
17 then I'll be back.

18 (Recess taken.)

19 THE COURT: Thank you, everyone. Please be seated.

20 I have a couple more agenda items, and then I'll go
21 back and review a few dates. And then we'll adjourn the public
22 session, and I would like to meet with defendants and counsel
23 ex parte.

24 Ms. Ludwig, you were able to connect with Judge
25 Jones?

1 MS. LUDWIG: In a manner of speaking, your Honor. I
2 saw him. I spoke with Becky. They took down my phone number
3 and indicated they would get back to us as to whether a hearing
4 can take place today.

5 THE COURT: All right. So at least you made that
6 connection.

7 MS. LUDWIG: Sort of, yes.

8 THE COURT: All right. That's all we know then.

9 DEFENDANT RYAN BUNDY: So, okay, before we finish
10 here, I do have a few administrative questions and a few points
11 of clarification. I don't know if you want to go through those
12 now or towards the end.

13 THE COURT: Go ahead now.

14 DEFENDANT RYAN BUNDY: Okay. First of all,
15 concerning the OS [sic] OIG investigation on the LaVoy Finicum
16 shooting, I did not have a schedule here before me until now.
17 I had to borrow one from Amy Baggio. But I want to make sure
18 that that's made a matter of record, that this be brought up.
19 This is a very important issue.

20 THE COURT: There's a motion, there's an opposition.
21 There will be a reply. I'll review it. I'll decide if oral
22 argument is warranted. If it is, I'll convene it. If it is
23 not, I'll rule on the record.

24 DEFENDANT RYAN BUNDY: Okay. Thank you.

25 THE COURT: All right. So it definitely is part of

1 the record. It's being briefed. It's on the to-do list.

2 DEFENDANT RYAN BUNDY: Okay. I wanted to make that a
3 matter of clarification because it seemed like it was brushed
4 over too quickly before.

5 THE COURT: It was only rushed over because we were
6 talking about the benchmarks for getting it in front of me.

7 DEFENDANT RYAN BUNDY: Okay. Thank you.

8 THE COURT: All right. Go ahead, Mr. Bundy.

9 DEFENDANT RYAN BUNDY: I have some more
10 administrative questions.

11 Do you understand that I am a living, breathing man,
12 being warehoused in a commercial zone against my will? And
13 that it is my wish that you restore mind, body, and spirit --
14 which is exempt from liberty -- the liberty to prepare, to
15 defend myself against these three men who come against me? And
16 that I will return to bring remedy to this matter. My word is
17 my bond.

18 THE COURT: I understand you have said that, and it's
19 noted on the record.

20 Go on. Your next point.

21 DEFENDANT RYAN BUNDY: Okay. You mentioned earlier
22 that you do not have authority to release me concerning this
23 going to this hearing on the Ninth Circuit. Does that also
24 mean you do not have authority to retain me?

25 THE COURT: You are already retained; that is,

1 detained under an order of the Court. That's the standing
2 order. I'm not reviewing it.

3 You know that Judge Jones has agreed to take up
4 motions to review detention as an assistance to the Court, so
5 I'm not going to take up that release issue any further,
6 Mr. Bundy.

7 DEFENDANT RYAN BUNDY: All right. Concerning that
8 first question, you said it was noted.

9 Do you have an answer for that question?

10 THE COURT: I'm not going to take time to answer the
11 question. It's not in the form of a matter that even rises to
12 the need for the Court to respond. So you've made your point.
13 It's on the record. If you think it was error for me not to
14 deal with it, you've got a right to appeal.

15 DEFENDANT RYAN BUNDY: Okay. I few other questions,
16 your Honor.

17 THE COURT: Yes, sir.

18 DEFENDANT RYAN BUNDY: Is your pension tied in any
19 form or fashion to the multi -- Multnomah County Detention
20 Center?

21 THE COURT: I'm sorry. I don't -- I did not
22 understand what you say. Say that again. Say that again,
23 please.

24 DEFENDANT RYAN BUNDY: Is your pension -- let me --
25 your pension, your -- is it tied in any form or fashion to the

1 multi -- Multnomah County Detention Center?

2 THE COURT: No.

3 DEFENDANT RYAN BUNDY: Okay. Have you or your Honor
4 ever received or heard -- received any credits, checks, money
5 orders, or electronic funds transferred from the plaintiff, the
6 United States of America Corporation?

7 THE COURT: I'm a United States District Judge. I
8 receive compensation from the United States Government for my
9 service.

10 DEFENDANT RYAN BUNDY: Okay. Thank you.

11 Are you aware that the United States Code 18-4001(a)
12 forbids you to hold me without an act of Congress? Under what
13 act of Congress are you holding me under?

14 THE COURT: Mr. Bundy, you've been detained by order
15 of the Court. I'm not going to take up detention issues again,
16 I repeat.

17 Please not -- don't waste everyone's time with
18 matters you know have already been addressed.

19 DEFENDANT RYAN BUNDY: Okay. Thank you, your Honor.

20 Are you aware that I have not been provided the
21 original charging instrument?

22 THE COURT: You received the Superseding Indictment
23 at the arraignment at which I presided. I'm not going to
24 address that further.

25 DEFENDANT RYAN BUNDY: Okay. Do the U.S. Attorneys

1 have an -- an obligation to mediate prior to court -- to a
2 court date?

3 THE COURT: Say that again.

4 DEFENDANT RYAN BUNDY: Do the U.S. Attorneys have an
5 obligation to mediate prior to a court date?

6 THE COURT: In a criminal matter, no.

7 They have the obligation to follow my orders,
8 however, with respect to conferral on issues before they're
9 presented to the Court, as a matter of the Court's exercise of
10 its inherent authority to manage a case.

11 DEFENDANT RYAN BUNDY: Okay. They don't have an
12 obligation to --

13 THE COURT: They do not.

14 DEFENDANT RYAN BUNDY: Okay. Are you aware that the
15 three U.S. attorneys have not provided me with the required
16 elements of the case, such as -- to name a few -- the grand
17 jury roll call, the grand jury roll call of my Indictment, the
18 record of the grand jury proceedings? And I require these
19 documents, or I will not be able to prepare my -- my defense.

20 THE COURT: You made a motion about grand jury
21 records on which I ruled. There isn't any pending issue before
22 me.

23 DEFENDANT RYAN BUNDY: Okay. Are you aware that I
24 cannot form a defense, plea, or seek any legal assistance until
25 I see the original of the following: An affidavit of probable

1 cause required by the Fourth Amendment; a certified copy of the
2 statute for codes they're charging me under; a certified copy
3 of the session and laws recorded and -- that create the statute
4 and code?

5 THE COURT: Mr. Bundy, if you have motions for
6 production, you may make them. I'm not going to take the
7 parties' time going through these exercises.

8 You've been properly arraigned, you've been provided
9 with the charging instrument, you've had your release reviewed.
10 You're detained. We're not going to go over these matters
11 again.

12 Do you have something new to raise?

13 DEFENDANT RYAN BUNDY: Sure.

14 Are you aware that a man entered a plea on my behalf
15 without power of attorney and while practicing law, from the
16 bench, that the plea is not valid -- this plea is not valid,
17 and therefore, there is no plea entered?

18 THE COURT: Mr. Bundy, a not guilty plea was entered
19 on your behalf. It is valid.

20 DEFENDANT RYAN BUNDY: It was not entered by me, your
21 Honor.

22 THE COURT: It was entered by the Court. Because if
23 you don't plead guilty, you plead not guilty. That's the rule
24 of law.

25 So you are not guilty. You're presumed innocent,

1 like all of the co-defendants, until and unless that
2 presumption is overcome in a public trial by jury; which, as
3 you know, I'm working really hard to get us to.

4 DEFENDANT RYAN BUNDY: Okay. All right.

5 THE COURT: Anything else?

6 DEFENDANT RYAN BUNDY: No. Thank you, your Honor.

7 THE COURT: You're welcome.

8 Mr. Medenbach had a matter to raise.

9 DEFENDANT MEDENBACH: Yes, your Honor. I have couple
10 of documents I would like to give to the Government and
11 yourself to review.

12 THE COURT: I'm sorry. You need to speak slower and
13 louder, please.

14 DEFENDANT MEDENBACH: I have a couple of documents
15 here I would like to have you and the Government review for
16 just a moment.

17 THE COURT: What are they, please?

18 MR. SALISBURY: May I approach, your Honor?

19 THE COURT: Yes, you may, Counsel. Thank you.

20 DEFENDANT MEDENBACH: I have not made these arguments
21 before.

22 THE COURT: Somehow that doesn't surprise me,
23 Mr. Medenbach.

24 We'll take a look and see what you have, okay?

25 DEFENDANT MEDENBACH: Okay.

1 THE COURT: Okay. Well, this is pretty easy to deal
2 with, Mr. Medenbach. These are two copies of an oath in
3 different forms. You've been making arguments about my oath.
4 I'm not going to take up the arguments, but I will mark these
5 for the record. We'll put them into evidence. They'll be
6 there before the Court of Appeals, when you want to raise the
7 issue before them.

8 DEFENDANT MEDENBACH: Sure you don't want to initial
9 it?

10 THE COURT: Mr. Medenbach, we're not going to play
11 these games.

12 DEFENDANT MEDENBACH: Okay.

13 THE COURT: If you want these papers in the record, I
14 will direct the clerk to mark them, they'll be put in the
15 record, and that's all we're going to do on that subject.

16 DEFENDANT MEDENBACH: Okay.

17 THE COURT: Is there anything else besides the oath
18 issue you wanted to address?

19 DEFENDANT MEDENBACH: Nope, that's it.

20 THE COURT: Okay. Very good.

21 Now, let me get back to my list.

22 The next status hearing is July 6. I've adjusted the
23 deadline for waiver of appearances to June 27, which is a
24 little more time than normal because we're this late in this
25 month. And then the next joint status report will be due June

1 30th.

2 I do want from the Government a current estimate of
3 how long the Government expects the case-in-chief to take,
4 assuming the trial proceeds beginning November 7 against all
5 defendants who have not waived speedy trial rights or who have
6 not taken them out of consideration with guilty pleas.

7 MR. KNIGHT: Three to four weeks, your Honor.

8 THE COURT: All right. That seems to be consistent
9 with what you've been estimating all along. Is that right?

10 MR. KNIGHT: Yes, your Honor.

11 THE COURT: Excuse me. Mr. Patrick?

12 DEFENDANT PATRICK: Is there a new date of November
13 7th?

14 THE COURT: Did I misspeak? I meant September 7.

15 MR. KOHLMETZ: Thank you, your Honor.

16 THE COURT: Crisis narrowly averted. (Laughter.)
17 Sorry. September 7 remains the day for jury selection to
18 begin.

19 All right. I reviewed my notes around all of your
20 calendaring issues. I don't think it's useful for me to recite
21 what all the schedule is going to be. I think I have all of
22 the input I need. I am going to issue an order that confirms
23 what we've covered on the record and sets deadlines based on
24 the feedback that you've given me in these reports, even as to
25 issues we haven't addressed on the record. And then we'll move

1 forward from there. So, for my purposes, the proceeding can
2 adjourn in this joint session.

3 I do want, after everyone leaves -- except defendants
4 and their counsel -- to have an ex parte session. I want to
5 address a couple of matters with defense counsel. But I need
6 to be sure there's nothing else --

7 Yes, Mr. Barrow.

8 MR. BARROW: I'm sorry to interrupt, your Honor. On
9 one of the deadlines we talked about related to discovery,
10 after conferring with my colleagues, I believe we may have
11 overextended ourself a little bit. That is the issue regarding
12 documents relating to the OIG investigation.

13 We've conferred with Mr. Olson, and we just ask that
14 our response be the 24th and not this coming Friday. And
15 Mr. Olson indicated that he did not object to that.

16 THE COURT: And did I set a reply? Remind me there.
17 So how much -- if we adjust to the 24th, then when --

18 MR. OLSON: It would be the next Wednesday.

19 THE COURT: Very good. We can do that.

20 MR. BARROW: Thank you.

21 THE COURT: That will be incorporated.

22 Yes, Mr. Patrick?

23 DEFENDANT PATRICK: What is the OIG?

24 THE COURT: The Officer of Inspector General is what
25 they're referring to. It is the discovery request regarding an

1 investigation of Mr. Finicum's shooting. That's a discovery
2 issue that's been part of these reports.

3 DEFENDANT PATRICK: And -- and we're trying to rule
4 whether that's relevant in this case?

5 THE COURT: The defendants wish discovery of the OIG
6 investigation, and that is an issue the Government contests;
7 under which I'm taking briefing on behalf of all defendants,
8 yes.

9 MR. KOHLMETZ: Thank you, your Honor.

10 THE COURT: Okay. Yes, Mr. Federico.

11 MR. FEDERICO: Your Honor, the Court had previously
12 directed the parties to provide recommendation on a schedule
13 for the filing of final pretrial papers. That was in the joint
14 status report. I'm not sure if that's something the Court --

15 THE COURT: I was just going to be setting them. But
16 if you want to give me some input, I'm happy to take it.

17 MR. FEDERICO: Yes, your Honor. As we indicate in
18 the status report, the defense position is that the Government
19 file theirs prior to the defendants filing theirs.

20 But the question has also arisen. I think there are
21 discrepancies -- maybe even local practice -- of what that
22 actually means in terms of filing pretrial papers.

23 And I know we've had discussions with the U.S.
24 Attorney's Office and expressed a preference that particularly
25 witness lists be given as soon as possible. That will help us

1 in terms of how we efficiently review discovery. So to the --

2 THE COURT: Well, this was what I was referring to
3 when I said I was going to -- based on the input you've given
4 me -- make my own orders. This case is different. It needs --
5 it needs concerted effort on a timely basis on multiple fronts.

6 And so I'm -- I know what your issue is. You want to
7 know what the Government's going to offer as soon as they know
8 or as soon as they're willing to commit. And that can be
9 staged, and I'm likely to require that.

10 MR. FEDERICO: Thank you.

11 THE COURT: Counsel knows that it's three to four
12 weeks. He has an idea what he's basing it on. Right?

13 MR. KNIGHT: Roughly, I had --

14 THE COURT: Okay. Good. So soon you'll be able to
15 share that under the Court's guidance.

16 All right. Other issues for the general session, for
17 everybody?

18 Okay. With that, then, the Government's excused.
19 All of the members of the public are excused. The defense
20 parties and counsel must remain. And then we'll go on the
21 record about that shortly.

22 (Conclusion of proceedings, 11:48 a.m.)

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I certify, by signing below, that the foregoing is a correct stenographic transcript of the oral proceedings had in the above-entitled matter this 23rd day of June, 2016. A transcript without an original signature or conformed signature is not certified. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

/S/ Amanda M. LeGore

AMANDA M. LeGORE, CSR, RDR, CRR, FCRR, CE
CSR No. 15-0433 EXP: 3-31-2018